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WEDNESDAY, JANUARY 3, 2007
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SENATE RULES COMMITTEE
STATE OF CALIFORNIA

HEARING

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, JANUARY 3, 2007

2:10 P.M.

REPORTED BY:

JAMES F. PETERS, CSR, RPR
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APPEARANCES

MEMBER PRESENT

SENATOR DON PERATA, Chair
SENATOR ROY ASHBURN, Vice Chair
SENATOR ROBERT DUTTON
SENATOR GIL CEDILLO
SENATOR ALEX PADILLA

STAFF PRESENT

GREG SCHMIDT, Executive Officer
PAT WEBB, Committee Secretary
NETTIE SABELHAUS, Consultant on Governor's Appointments
SUSIE SWATT, Consultant to SENATOR ASHBURN
CHRIS BURNS, Consultant to SENATOR DUTTON
DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

RACHELLE B. CHONG, Member
Public Utilities Commission

RALPH CAVANAGH,
Natural Resources Defense Council

JIM HAWLEY
TechNet

AUBRY STONE, President
California Black Chamber

JOSÉ PÉREZ
Latino Journal

LINDA NG, President
Organization of Chinese Americans, Sacramento Chapter

APPEARANCES CONTINUED

ALSO PRESENT

MICHELLE LAU, Executive Director
Asian Pacific Islander American Public Affairs Association

HONEY LUM, President
Asian Pacific State Employees Association

MARGARIT FELTS, President
CalCom

ADRIAN PEREZ, President
Calmagazine.com - Internet T.V.

BILL SCHULTE
Self Help for the Elderly

KATHERINE BRANDENBURG
FPL Energy

JIM CONRAN
California Small Business Association

DONNE BROWNSEY
PVNOW

ALEXANDRA ROOKER
Communications Workers of America, District 9

NANCY ZARENDA, Director
Spanish Language Academy

JAN SMUTNY-JONES, Executive Director
Independent Energy Producers

SARAH De YOUNG, Executive Director
CALTEL

KEENAN DAVIS, General Counsel
01 Communications, Inc.

LENNY GOLDGERG
TURN

HELLAN ROTH DOWDEN
California Community Technology Policy Group

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By Appointees, as well as Written Statements
by Appointees Not Required to Appear:
Member, Public Utilities Commission:
RACHELLE B. CHONG; Member, Commission on
Teacher Credentialing: PAULA A. CORDEIRO

PROCEEDINGS

CHAIRMAN PERATA: Okay. We have a Governor's appointee today for the Public Utilities Commission, which we will take up first. And Rachelle Chong please come forward.

And I'm sorry that some of you -- well, I'm not sorry that the lobbyists have to stand, but --

(Laughter.)

CHAIRMAN PERATA: You guys should get back in shape. But those civilians who are here -- I see a couple of them in the front row. And, in fact, if some of the lobbyists would like to give their seats up to the civilians, it would probably be a really nice gesture.

That's it. There you go.

(Laughter.)

CHAIRMAN PERATA: I rest my case.

(Laughter.)

CHAIRMAN PERATA: Rachelle, would you like to open?

MS. CHONG: Yes, sir, I would. Thank you.

It is a great privilege to appear before this Committee. I wanted to thank the Governor for nominating me, and to all the organizations and individuals and particularly my family for supporting me today.

CHAIRMAN PERATA: Would you like to introduce

1 them?

2 MS. CHONG: I would love to.

3 CHAIRMAN PERATA: Please.

4 MS. CHONG: I would like to introduce my husband,
5 Kirk Del Prete and my twin 8-year old daughters, Claire
6 and Genevieve.

7 (Applause.)

8 MS. CHONG: The girls are playing hooky from
9 school, but I thought this would be good a exposure to
10 government.

11 CHAIRMAN PERATA: Well, let's hope so.

12 (Laughter.)

13 MS. CHONG: Yes. And I also would like to
14 quickly introduce my brother Curtis Chong, Patricia Lee,
15 his wife, and my nephew Jason who drove from Stockton to
16 be with us today.

17 CHAIRPERSON PERATA: Welcome.

18 (Applause.)

19 MS. CHONG: Thank you. If I might proceed with
20 my statement.

21 CHAIRMAN PERATA: Please do.

22 MS. CHONG: As background, I was born and raised
23 in Stockton. I got public education at UC Berkeley and
24 then over to UC Hastings for my law degree. And then I
25 practiced communications law before the Federal

1 Communications Commission in Washington and then before
2 the California Public Utilities Commission.

3 In 1994, I had the honor of being nominated by
4 President Clinton to a Republican seat on the Federal
5 Communications Commission. And I was very proud to be the
6 first Asian American to sit on the FCC. For 3 and a half
7 years I was in the cat-bird's seat. I was regulating
8 broadcasters, phone companies, cable companies and
9 satellite communication companies. And through this
10 position, I gained a lot of insights into this very
11 rapidly changing industry and many of the regulatory
12 challenges faced.

13 If confirmed, I will leverage this regulatory
14 expertise to oversee California utilities. It's my
15 practice to be accessible to parties, to study issues very
16 carefully and to strike a fair balance. Specifically, I
17 have 4 major PUC goals.

18 First, for energy. I would like to promote
19 energy efficiency and renewable resources, decrease
20 greenhouse gas emissions and ensure reliable electricity
21 at reasonable rates. My record on energy issues is clear.
22 My first vote as a PUC Commissioner was the decisive vote
23 on the California solar initiative. I support the PUC's
24 work on greenhouse gas cap -- establishing a cap to
25 achieve AB 32's worthy goals.

1 This month we're going to adopt a greenhouse gas
2 performance standard for all base-load powerplants seeking
3 long-term investment and utilities, as called for by
4 Senator Perata's SB 1368.

5 I've supported our energy action plan at the
6 Commission. This plan calls for us to support energy
7 efficiency and demand response before we build new
8 powerplants. California leads the nation in energy
9 efficiency. We've held electrical use per person constant
10 over the past 25 years in this state, even though use per
11 person in the rest of the nation has increased by 50
12 percent. Of course, we can and we should do better.

13 I supported the PUC's continued work on resource
14 advocacy. I voted for ample reserve margins to make sure
15 we keep the lights on on peak days. And I've supported
16 decisions upgrading transmission systems so that
17 electricity from the lowest cost generators will flow
18 where the power is needed. I have authored a demand
19 response decision to ensure we reduce peak energy needs
20 this coming summer.

21 And finally, I have a special interest, based on
22 my communications background, in giving consumers more
23 information about their energy use through smart meters.
24 I would like to see consumers get more RealTime
25 information so that they can track their energy use and

1 control their energy bills.

2 My second goal is to narrow the digital divide by
3 deploying broadband and other communications technology
4 through the state. I wanted to congratulate the
5 legislature for passing the video franchising bill last
6 year. This increased competition will provide the right
7 incentives to attract broadband services to our state.

8 Also, this bill ensured that the PUC has the data
9 we needed to find out where the gaps are in broadband so
10 that we can try to fill them. As the assigned
11 commissioner, I will implement the video franchise bill on
12 time. I am also going to monitor and enforce the
13 important buildup and anti-discrimination provisions in AB
14 2987.

15 Our tools include fines, suspension and
16 revocation. I am passionate about broadband, because I
17 believe it's critical to the economic development of our
18 state and I also think it's critical to ensuring that our
19 children have a future. I am very concerned that our
20 children be technology literate, so that when they grow up
21 they can be a valued employee in our increasingly high
22 tech society.

23 To this end, I did author the PUC's broadband
24 over power-line decision earlier this year. And this
25 decision brought some regulatory certainty so that

1 companies seeking to use our power lines, can deliver
2 high-speed Internet to consumers.

3 And outside the PUC, I've been working with the
4 California Emerging Technology Fund to bring broadband to
5 rural, low-income and disability communities. I was just
6 named as a member of the Governor's task force on
7 broadband. And I look forward to working with this group
8 to fill broadband gaps.

9 My third goal is to ensure reasonable rates and
10 consumer protection in telecommunications. The .
11 introduction of competitive markets in telecom has caused
12 us to reassess our role at the PUC. Advances in
13 technology are outstripping prior regulations, which were
14 conceived in era where a phone was just a phone. Phones
15 now hold your contacts list. They let you access your
16 E-mail and they allow you to even buy things on the
17 Internet.

18 CHAIRMAN PERATA: You're kidding.

19 (Laughter.)

20 CHAIRMAN PERATA: Why didn't you tell me?

21 (Laughter.)

22 MS. CHONG: So as recognized by the legislature,
23 phone companies like AT&T and Verizon are now adding video
24 to their current offerings of phone and Internet service.
25 And then you have to add to the mix there's now more

1 wireless phones than wired phones in the state. And then
2 the further twist is we have about 8 million Americans
3 giving up their phones to use Internet phones.

4 So in this modern marketplace for phones, what is
5 the right role for the PUC? Well, I think we should
6 protect consumers from fraud. We should resolve
7 complaints quickly and go after bad actors who prey on
8 innocent consumers. And to that end, since I've joined
9 the PUC a year ago, we have many accomplishments in
10 consumer protection.

11 The consumer complaint backlog was at about
12 25,000 when I arrived. And it's been reduced by half,
13 thanks to the Legislature who gave us 15 new consumer
14 affairs bodies and 12 of them are bilingual, so we've
15 worked that backlog down.

16 Second, I helped create a consumer website called
17 calphoneinfo.com and it provides consumer education
18 information to consumers about the changing telecom market
19 and how to file a complaint in 12 different languages.

20 We have reached out directly into the communities
21 and we have started consumer bill forums. We are focusing
22 on minority communities, low-income communities and the
23 senior community to go in and educate these folks on the
24 changes in technology, our low-income programs, how to
25 file a complaint and answering any billing questions.

1 Finally, we have a new fraud unit at the PUC
2 focusing on telecom to make sure that anyone who does prey
3 on consumers will be swiftly taken to task.

4 I've also looked at the universal service
5 policies of the PUC. They appear to be quite outdated. I
6 think that what the problem is is they might inadvertently
7 consign low-income and disability communities to old
8 technology.

9 My final regulatory goal, and this is the last
10 one, is that I would like to ensure an ample supply of
11 clean water at reasonable rates. Our state has growing
12 water needs and I am concerned how we're providing proper
13 incentives for infrastructure upgrade. I'm concerned
14 about the speed at which our water cases proceed, and so
15 I've been supporting streamlining reforms.

16 Recently, I voted to support our very first
17 low-income water utility programs. And finally, I do
18 support water conservation. You know, the first reason is
19 obvious. There's just not enough water to waste, but the
20 second reason is because improving water use efficiency
21 will reduce energy needs and help reduce greenhouse gas
22 emissions.

23 So, if confirmed, I look forward to working with
24 all of you on these critical issues for the State.

25 Thank you very much.

1 CHAIRMAN PERATA: Thank you.

2 We're going to ask for opposition first and then
3 support and then -- support first, I'm sorry -- and then
4 we bill go to Members' questions. And I would prevail
5 upon everyone to be brief, not that what you have to say
6 isn't fascinating and illustrating, but there's just a lot
7 of you.

8 So come forward.

9 MR. CAVANAGH: Mr. Chairman, Senators. I'm Ralph
10 Cavanagh representing the Natural Resources Defense
11 Council with more than 200,000 members and activists in
12 California. Respecting the Commission's tradition of
13 ruthless brevity, but to add a word beyond just, "I
14 support".

15 Senators, it's not an exaggeration to say that
16 this is today, the California PUC, the most important
17 energy and environmental regulatory body in the United
18 States. It will have an absolutely critical role in
19 implementing the 2 path-breaking global warming bills,
20 including, Senator Perata, your SB 1368.

21 We are confident, based on her record of
22 achievement, and not just hypothetical or resume, that
23 Commissioner Chong is the right person for this job. We
24 want you to know she didn't put enough emphasis on it.
25 Without her there is no California Solar Initiative. That

1 was a critical vote early in her term. It was not an easy
2 vote. And today the front page of the Los Angeles Times
3 bears witness to how rapidly and effectively we're moving
4 forward together.

5 She has repeatedly, beyond any normal call of
6 duty, declared her public support for California's
7 leadership on energy efficiency. She's one of the reasons
8 why we're the world leader and we know that she will be a
9 faithful servant of this legislature in the critical tasks
10 ahead of implementing AB 32 and SB 1368. We are proud to
11 be counted among her supporters.

12 Thank you, Mr. Chairman.

13 CHAIRMAN PERATA: Thank you.

14 MR. HAWLEY: Mr. Chairman and members of the
15 Committee, Jim Hawley with TechNet. We're a group of
16 about 150 technology companies, most of them based in
17 California. We believe that Commissioner Chong brings
18 enormous expertise to the PUC. More than many, she
19 understands the critical role that broadband and
20 high-speed Internet access plays in keeping our economy
21 strong and creating new job opportunities.

22 And she has become a champion for broadband and
23 its broad availability for the people of California. Most
24 of the PUC's work is vital to the tech industry. We're
25 impressed by her grasp of the issues and we're also

1 impressed by her willingness to listen and look at all
2 sides of an issue and to listen to the concerns of all of
3 the parties, including many of the small tech companies
4 that don't often have the resources to spend a lot of time
5 at the Commission.

6 We appreciate you're taking the time to hear our
7 concerns and urge your support for confirmation.

8 CHAIRMAN PERATA: Thank you, sir.

9 MR. STONE: Good afternoon, Mr. Chairman. Aubry
10 Stone, president and CEO of the California Black Chamber.
11 It's an honor to be here before you this afternoon. And
12 I'm here in favor of Commissioner Chong being admitted on
13 a permanent basis to the Commission.

14 You heard her speak a lot about her resume and
15 some of the things that she's done. But one of the things
16 that has struck me is her as a person and her personality.
17 And as we've testified several times on major issues at
18 the PUC, she's always been attentive, and whether she
19 agreed or not, she gave you the respect and listened to
20 you. And that went a long way with me representing some
21 of the issues I represented.

22 But lastly and probably most important, and I'm
23 most proud of is the fact that she looks like California,
24 and that's what we need. So I'm happy to be here in her
25 support.

1 CHAIRMAN PERATA: Thank you, sir.

2 MR. PEREZ: Good afternoon, Senator and members
3 of the Senate Rules Committee. My name is José Pérez and
4 I'm here wearing 2 hats. I submitted a letter in support
5 of Ms. Chong's confirmation on behalf of the Latino
6 Journal. But I want to give you a personal perspective.
7 In the last year as working with Ms. Chong as Chair of the
8 California Utilities Diversity Council, we found her to
9 have an incredible breadth and depth of knowledge of
10 especially the telecommunications arena. And so we think
11 that her experience, her knowledge about
12 telecommunications both nationally is really a big benefit
13 to California and, of course, her experience in regulating
14 the television industry. I think that we're very
15 fortunate to have her here. We're very supportive of her
16 and we urge an aye vote.

17 Thank you.

18 CHAIRMAN PERATA: Thank you.

19 MS. NG: Good afternoon, Chairman Senator Perata
20 and members of the Senate Rules Committee. Thank you for
21 this opportunity to testify in support of Commissioner
22 Rachelle Chong.

23 My name is Linda Ng and I'm the president of the
24 OCA Sacramento Chapter. OCA was founded in 1973 as the
25 Organization of Chinese Americans. It's a national civil

1 rights advocacy and educational organization dedicated to
2 advancing the social, political and economic well-being of
3 Asian-Pacific Americans. Our goals are to promote civic
4 participation and leadership. We also advocate for social
5 justice, equal opportunity and fair treatment.

6 I'm here today to urge you to confirm Rachelle
7 Chong, a 4th generation Chinese American, as a
8 Commissioner of the Public Utilities Commission. OCA
9 supported President Clinton's nomination of Commissioner
10 Chong to the Federal Communications Commission in 1994.
11 Her background as a career telecommunications attorney
12 made her a highly-qualified candidate. She was the first
13 Asian American to serve as an FCC Commissioner.

14 In that capacity, Commissioner Chong worked
15 tirelessly and distinguished herself as a fair-minded
16 Commissioner. She was well respected within the FCC and
17 by those outside the FCC.

18 In December 2005, Ms. Chong was nominated by
19 Governor Schwarzenegger as a commissioner for the PUC.
20 This past year, she has demonstrated her expertise,
21 integrity and leadership in communications issues. She is
22 energetic and focused. We are very impressed with
23 Commissioner Chong's dedication and ability to bringing
24 her broadband vision to our community and other minority
25 communities.

1 Commissioner Chong has also been working on
2 issues relating to the senior citizens and disability
3 access to technology. She has expressed to us her concern
4 about the digital divide. She does not want low-income
5 minority and rural communities to be left behind in the
6 information age.

7 We support these initiatives and her vision of
8 providing equal access to technologies for all
9 Californians. On behalf of OCA, I strongly urge you to
10 voted yes to confirm Commissioner Chong.

11 Thank you again for the opportunity to appear
12 before you and submit my testimony.

13 CHAIRMAN PERATA: Thank you.

14 MS. LAU: Good afternoon, Senators and
15 Commissioner. My name is Michelle Lau, and I'm Executive
16 Director of APAPA, the Asian Pacific Islander American
17 Public Affairs Association APAPA. My nonprofit
18 organization APAPA seeks to work collectively for the
19 advancement, leadership and empowerment through education
20 and active participation in civic and public affairs for
21 all Asian Pacific Islander Americans.

22 Our object here is including promoting leaders
23 who are supporting our mission and oppose prejudice and
24 discriminatory action against Asian Pacific Islander
25 American.

1 I am here today to representing APAPA and the
2 founder and chair of the APAPA Mr. C.C. Yin to lend our
3 full support to Commissioner Rachelle Chong. Not once but
4 twice Commissioner Chong has stepped forward from our
5 Committee to be a communications policy leader. In 1994
6 President Bill Clinton nominated Commissioner Chong to the
7 to be first Asian American FCC commissioner. She was
8 extremely qualified as a career telecommunications
9 regulatory lawyer and well suited to the prestigious
10 position.

11 The Asian community gladly support Ms. Chong in
12 her FCC confirmation. Commissioner Chong distinguished
13 herself as an outstanding FCC commissioner and achieved
14 many customer benefits in her tenure in Washington D.C.
15 She was someone who balanced industry interests with
16 consumer interests fairly. She made herself available for
17 meetings with the consumer and has a positive can-do
18 attitude that impressed those who appeared before her.

19 Our community was appreciative that she took time
20 to mentor and encourage Asian Pacific Americans, including
21 the young legal interns at the FCC. She took a perfect
22 stand on the issue of importance to our community,
23 speaking out against demeaning racial stereotypes of
24 Asians during the campaign finance scandal.

25 When Commissioner Chong was nominated by Governor

1 Arnold Schwarzenegger to the California Public Utilities
2 Commission, the APAPA and then the APA community was again
3 pleased to support her nomination.

4 In this last year, we have watched Commissioner
5 Chong take a strong leadership role on issues our
6 community cares about. And Asian Americans are some of
7 the most connected Internet users in the nation with
8 higher penetration rates of any ethnic group. One of
9 Commissioner Chong's goals is to bring the best broadband
10 system to all California. Our community strongly supports
11 this important goal.

12 Commissioner Chong understands that having the
13 best broadband system makes California's economic
14 development future fine. She realizes it means good
15 high-tech jobs for our children. So we were proud when
16 she was appointed to the Governor Broadband Task Force
17 because we know our community will have a voice in making
18 sure that the broadband systems get built fairly to all
19 communities, including communities of color, low-income
20 communities and rural areas.

21 Commissioner Chong also took a leadership role in
22 issuing a broadband over power line decision to bring a
23 new broadband provider to consumers through the electrical
24 lines.

25 We believe that her critics do not understand the

1 breadth of knowledge and the passion that Commissioner
2 Chong brings to her work. Commissioner Chong has an
3 outstanding track record for minorities and for consumers.
4 She is an Asian American leader we are proud of on behalf
5 of APAPA. I strongly urge you to vote yes to confirm
6 Commissioner Chong.

7 Thank you very much.

8 CHAIRMAN PERATA: Thank you. We're going to
9 treat that as summary statement now.

10 The qualifications of Ms. Chong are pretty prima
11 fascie as well as her work in the Clinton administration.

12 Sorry, Bob.

13 (Laughter.)

14 CHAIRMAN PERATA: But I would like if you now
15 would just -- if there's anything different, then please
16 say so. Other wise associate yourself with the other
17 remarks, because there are many people here who want to
18 speak.

19 Thank you.

20 MS. LUM: Good afternoon Don Perata and honorable
21 members of the Senate Rules Committee. Thank you for my
22 testimony on behalf of Rachelle Chong Commissioner for
23 Public Utilities Commission.

24 My name is Honey Lum, and I'm the president of
25 the Asian Pacific State Employees' Association, APSEA.

1 APSEA was founded in 1975 and we have over 900 members
2 statewide in chapters throughout the State. Our
3 membership is primarily composed of California State
4 government employees, some of which are retired. Our
5 mission is to ensure equal opportunity to advance the
6 careers of Asian Pacific State Employees Association
7 members.

8 I'm here to express APSEA's strong support for
9 the confirmation of Commissioner Chong. Her background as
10 an FCC commissioner, communications lawyer, small business
11 owner make her a highly qualified nominee. Commissioner
12 Chong is the first Asian American to be nominated to the
13 California PUC. We want to emphasize that what an
14 important nomination this represents for our community.
15 As State employees, we appreciate the highly political
16 environment and very technical issues that Commissioner
17 Chong has encountered as a PUC commissioner.

18 As State employees, we are deeply concerned about
19 serving the people of California to the best way possible.
20 We want only to support nominees who serve California well
21 and make us proud of State employees. Commissioner Chong
22 is someone we proudly support.

23 Commissioner Chong took a special interest in the
24 PUC's Consumer Affairs Bureau or CAB. CAB is a group of
25 PUC employees that answer complaint hot line through the

1 PUC. Commissioner Chong dialed the PUC complaint hot line
2 herself one day and was concerned that after through many
3 phone -- menu trees it almost took 5 minutes to reach a
4 live PUC employee to come to the line. She charged right
5 into the Office of the CAB manager and insisted that the
6 phone tree be changed so that live persons be available to
7 a caller within the first 2 minutes.

8 Because she wanted complaints resolved faster,
9 she supported efforts to add 15 new employees to the CAB,
10 12 of which are bilingual. APSEA supported 12 new
11 bilingual representatives because this will greatly
12 improve the quality of service to limited-English speaking
13 consumers. It also shows that PUC is sensitive to the
14 growing diversity of California's population.

15 Commissioner Chong led efforts to draft
16 consumer-friendly brochures on how to file complaints to
17 PUC and understanding your phone bill, avoiding fraud and
18 how to shop for wireless services. We are impressed with
19 these brochures. They were translated into 12 languages,
20 including Spanish, Chinese, Korean, Japanese, Russian,
21 Hmong and Tagalog. Community-based organizations have
22 agreed to hand out these brochures to many of our
23 constituencies throughout the state.

24 Commissioner Chong has also personally led many
25 workshops between phone carriers, community groups and

1 consumer groups attempting to resolve contentious problems
2 and working out practical solutions that everybody could
3 agree upon. She has won the respect of the parties for
4 her personal efforts.

5 And I relate these stories because we want the
6 members of this important committee to hear about the
7 positive efforts that Commissioner Chong has done in her
8 past year as a commissioner. She cares about State
9 employees and a job that they do to serve the consumers.

10 Some groups have tried to portray her as
11 indifferent to consumer needs. We think this is far from
12 the truth, and we want to make sure that you hear the
13 other side of the story. On behalf of APSEA, I urge your
14 support to confirm Commissioner Rachelle Chong for the
15 Public Utilities Commission.

16 Thank you for your time.

17 CHAIRMAN PERATA: Thank you.

18 If you continue to be a gentleman, you'll be here
19 all night.

20 (Laughter.)

21 MS. FELTS: Chairman Perata, I'm Margarit Felts
22 the president of CalCom, the association of telephone
23 company that have served California for over 100 years.
24 I'm going to break the trend here and say ditto and we
25 urge your support for Commissioner Chong.

1 CHAIRMAN PERATA: After a hundred years, you're
2 tired, I understand.

3 (Laughter.)

4 MR. PEREZ: Yes, sir. Thank you, Mr. Chairman,
5 Senators. My name is Adrian Perez. I'm president of
6 Calmagazine.com Internet TV. We support the confirmation
7 of Commissioner Chong. We believe her goals, her vision
8 is consistent with bringing broadband to minority and
9 monolingual language communities throughout the state of
10 California.

11 Thank you.

12 CHAIRMAN PERATA: Thank you, sir.

13 MR. SCHULTE: Mr. Chairman and members, my name
14 is Bill Schulte. I'm on the board of directors for Self
15 Help for the Elderly, a social service organization
16 operating in the San Francisco bay area.

17 Our president and CEO asked me to appear today to
18 reiterate the strong support for Commissioner Chong that
19 we expressed in our letter to the Committee. Also to add
20 that we feel she is eminently qualified to carry out the
21 duties of a commissioner of the Public Utilities
22 Commission. And we are very strongly supportive of her
23 community-based approach to regulation.

24 You've heard a number of things both from
25 Commissioner Chong and others, but she has given us great

1 access and made sure our issues were in front of the
2 Commission. She's helped revamp the complaint process to
3 make it more consumer friendly to consumers. She
4 spearheaded the revitalization of the Commission's
5 consumer outreach and education efforts. And in the
6 Lifeline proceedings, she's helping us make sure that all
7 consumers have access to technologies.

8 And for those reasons and a number of others,
9 we're very proud to be strong supporters of Commissioner
10 Chong.

11 Thank you.

12 CHAIRMAN PERATA: Thank you.

13 MS. BRANDENBURG: Thank you, Senators. My name
14 is Katherine Brandenburg. I'm with the Flanigan Law Firm,
15 representing FPL Energy. We strongly support the
16 confirmation of Commissioner Chong. She's a strong
17 supporter of renewable energy, which FPL Energy is the
18 largest wind providers in the country.

19 Thank you.

20 CHAIRMAN PERATA: Thank you.

21 MR. CONRAN: Members of the Committee, Happy New
22 year. My name is Jim Conran. I'm with the California
23 Small Business Association. We have over 200,000 members
24 in the State and we enthusiastically support the
25 Commissioner's confirmation.

1 We had the opportunity to work with her when she
2 was at the FCC and found her to be a very accommodating
3 and reasonable voice concerned about small business issues
4 and how the FCC would impact small businesses, both with
5 universal service and rates and competition.

6 We think she'll bring that same judgment to the
7 PUC. In fact, we think she's already shown that. We
8 would urge your support of her.

9 Thank you very much.

10 CHAIRMAN PERATA: Thank you.

11 You have a lovely daughter.

12 MS. BROWNSEY: Why thank you very much, Mr.
13 Chairman.

14 CHAIRMAN PERATA: It's been a long time.

15 MS. BROWNSEY: Mr. Chairman, Members, Donne
16 Brownsey representing PVNOW, which is a consortium of
17 solar -- some of the leading solar manufacturers in the
18 state of California. We're here in support of Ms. Chong's
19 appointment. We believe that her commitment to renewables
20 and to solar energy really is absolutely essential to the
21 successful future of the state of California and would
22 urge your approval of her appointment.

23 Thank you.

24 CHAIRMAN PERATA: Thank you.

25 MS. ROOKER: Good afternoon, Senators. I heard

1 you loud and clear, Senator Perata. With that, my name is
2 Alex Rooker. I'm representing 65,000 working women and
3 men in California. We're the communications workers of
4 America.

5 We found Commissioner Chong to be very
6 open-minding and have a keen interest in our issues. So
7 with that, we urge your support of Commissioner Chong.

8 CHAIRMAN PERATA: Thank you.

9 MS. ZARENDA: Good afternoon Mr. Chairman and
10 Members of the Committee. My name is Nancy Zarenda. I'm
11 the director and founder of the Spanish Language Academy.
12 We provide language access consulting and training for
13 government agencies and businesses.

14 Commissioner Chong has been proactive and she's
15 been a champion for language access issues, which are
16 critical in California, the most linguistically and
17 culturally diverse state in the nation, where over 200
18 languages are spoken and 41 percent of our residents speak
19 a language other than English at home.

20 Under the CPUC Telecommunication Consumer
21 Protection Initiative, Commissioner Chong assumed the lead
22 in dealing with the unacceptable trend of fraud and abuse
23 against California's nearly 8 million limited English
24 proficient residents and consumers. She led an
25 unprecedented series of statewide workshops bringing

1 together diverse community groups and businesses, who had
2 multiple opportunities to voice their concerns and offer
3 solutions, which had led to consideration of formal
4 proceedings at the Commission.

5 She is committed to fulfilling the responsibility
6 of the CPUC to serve all of California's consumers in all
7 of the languages that they speak. I urge your support.

8 CHAIRMAN PERATA: Thank you.

9 MR. SMUTNY-JONES: Happy New Year, Mr. Chairman
10 and Members of the Committee. I'm Jan Smutny-Jones. I'm
11 the executive director of the Independent Energy
12 Producers. We represent about 45 non utility companies in
13 the state as well as about 90 percent of the renewable
14 energy business.

15 And we are here to urge you to confirm Ms. Chong
16 as Commissioner of the PUC. As you are well aware, there
17 is a significant amount of work at the PUC right now, in
18 terms of implementing the global climate change goals of
19 this state, including SB 1368 -- 32, as well as some very
20 important procurement reliability issues currently before
21 the Commission. We need a full Commission that has
22 intelligent people of high integrity. Ms. Chong certainly
23 fills that description and we'd urge you to confirm her
24 today.

25 Thank you.

1 CHAIRMAN PERATA: Thank you.

2 MS. De YOUNG: Good afternoon, Senator Perata and
3 Senators of the Committee. My name is Sarah De Young.
4 I'm the Executive Director of CALTEL, the competitive
5 telephone association. I represent 30 companies that
6 compete in the territories of AT&T and Verizon.

7 And we have not always -- we've sometimes been
8 disappointed with some of the decisions this past year and
9 disappointed that really we haven't been able to get a
10 foot hold yet on some of the wholesale access issues that
11 are important to my members. But I will say that in our
12 conversations with Commissioner Chong, we found her to be
13 very clear, very reasonable and very accessible. And when
14 I ask for a meeting with Commissioner Chong, I get a
15 meeting with Commissioner Chong, which I will say is not
16 always the case with the other Commissioners in that
17 building.

18 So, again, we're very small, and access is an
19 issue for us. And so we urge your confirmation of
20 Commissioner Chong.

21 Thanks.

22 CHAIRMAN PERATA: Thank you. Anybody else in
23 support?

24 Now, I'll call for opposition, but I'd like to
25 remind everybody that the -- one more in support?

1 MR. DAVIS: One more. Thank you, Senator. Sorry
2 for the last minute. My name is Keenan Davis. I
3 represent O1 Communications. I'm the general counsel of
4 the company. We're a small competitive local exchange
5 carrier located here in Sacramento. And we feel that
6 Senator -- that Commissioner Chong, if she is reappointed,
7 will give us open access. And we're a small company, part
8 of the every dwindling number of SELEX. And hopefully
9 Commissioner Chong can help us do something about that.
10 And we vote -- we urge your aye vote for her.

11 Thank you very much.

12 CHAIRMAN PERATA: Thank you.

13 Okay. Before the opposition comes forward, I
14 want to remind everybody that the LSU Notre Dame game
15 starts at 4:30.

16 (Laughter.)

17 CHAIRMAN PERATA: As a long-time Catholic, I have
18 obligations.

19 So those in opposition?

20 MR. GOLDBERG: Mr. Chair, Lenny Goldberg on
21 behalf of TURN. Our executive director's energy efficient
22 Prius broke down on the way here. So I think I'm filling
23 in. He may walk in the door at any time, if he will, but
24 that's Bob Finkelstein who is expressing his regret, as we
25 speak, for not being here.

1 Please cut me off if I go on too long. I know
2 you're looking for the LSU/Notre Dame game among other
3 things in time. But I do want to speak to several issues,
4 because we as TURN we represented small consumers for 30
5 years, back to the days of Sylvia Siegal before the Public
6 Utilities Commission. I've lobbied for TURN on their
7 behalf for about 15 now.

8 And we very reluctantly oppose this nomination.
9 We say that because we have worked with every commissioner
10 there. If Ms. Chong is confirmed, we hope to work closely
11 with her, if she's there and confirmed. But -- and that
12 way we know we have to play the hands we're dealt, and
13 work with the Commission. But we have seen, we think,
14 evidence of really being closed to our consumer concerns
15 that we've raised. And let me give you just a very few
16 examples.

17 The most impressive to us is the marketing abuse
18 case, that came about through the uniform regulatory
19 framework. In 2002, SBC, PacBell, now AT&T were given
20 very strict orders after a substantial hearing at the
21 Commission fined \$25 million and given very strong
22 marketing orders that prevent them from -- may require
23 that they offer the lowest price services, not push in
24 market bundles, a number of issues that came up in abuses
25 when people would call in and say, "Hey, I need some

1 service," and would be foisted many, many things upon
2 them, mostly low income and not very well or very good
3 English speaking people or non-English speaking people
4 would get themselves foisted with bills and services that
5 they didn't want.

6 This was clear abuse. This had went through the
7 Public Utilities Commission a long complaint hearing
8 brought by the Utility Consumer Action Network and others.
9 And a fine was issued and strict marketing orders were
10 allowed.

11 Now, in the uniform regulatory framework, which
12 was the major telecommunications deregulation proceeding
13 that Commissioner Chong was the assigned commissioner on,
14 there was a lot of testimony that were not -- on hundreds
15 of issues, including the extent to which there was
16 competition. We think in many cases for water line
17 service there is not. Most of our consumer concerns, we
18 believe, were rejected in favor of a wholesale
19 deregulation.

20 That is something we have an honest disagreement
21 about. But in this case, what went into the final uniform
22 regulatory framework order was a statement that says
23 asymmetrical marketing orders are hereby abolished.
24 Everybody has to play by the same rules. Well, that may
25 have been a general statement.

1 Shortly thereafter, AT&T filed an advice letter,
2 which means 1-day notice, you're just on advice of the
3 Commission, our marketing orders, all of those -- all of
4 those constraints put on their marketing abuses are gone.
5 We objected to that. The Department of Rate Payer
6 Advocates objected to that. And as a result of objection
7 to an advice letter, it went to a hearing.

8 When it went to a hearing, were that language
9 that got inserted into the final decision, if that were
10 sort of general language but not intended to overturn
11 these orders against marketing abuses, the Commission
12 could have decided that. But at Commissioner Chong's
13 leadership, they allowed, with some modifications, that
14 advice letter to stand. And as of this day, the
15 protections against marketing abuses by the largest
16 monopoly telephone company in the state and in the country
17 are gone.

18 Now, there's been a subsequent decision that said
19 prospectively we'll look at this. However, those
20 marketing protections are gone. Now, this was done
21 without any understanding or discussion, as we understand
22 it -- and if you don't believe our take on this, which
23 says oh, we'll maybe we missed this, I would urge you to
24 read Commissioner Brown's dissent, which we've never seen
25 in all these years, as scathing a dissent on an issue at

1 the Public Utilities Commission, which said we have been
2 misled and we do not know how this happened, and we think
3 this is a great defeat and disaster for consumers.

4 Now, there were several chances to make this
5 right. If it was not meant that we would very quietly
6 without hearings and without reasonable process overturn
7 these marketing orders, if that was not meant, there were
8 several chances by Commissioner Chong to make that right.
9 It was not made right. And that to me was abusive of --
10 to us was abusive of process as well as a substantive
11 outcome that is very bad for consumers.

12 With regard to the uniform regulatory framework,
13 I will point 1 major issue I want to bring to Senator
14 Ashburn's attention, which is we think that there was
15 wholesale acceptance of industry position and very little
16 acceptance of consumer protections, consumer issues as we
17 deregulated prices and eliminated disclosures.

18 In particular, rural home telephone -- rural
19 telephone service will now be de-averaged. We do not
20 believe there was any -- if there was evidence that there
21 was competition in the urban areas, and therefore we can
22 deregulate virtually all prices. And I've just got a
23 postcard from AT&T saying all our prices of services are
24 going up unless you go into a bundle. The results are a
25 wholesale rural de-averaging. Now, we may want to address

1 this in the Legislature, because rural customers are going
2 to see their phone bills up substantially.

3 CHAIRMAN PERATA: Ashburn's your guy.

4 (Laughter.)

5 MR. GOLDBERG: Right. And we think that that was
6 a huge mistake.

7 CHAIRMAN PERATA: By the way, I mean, he thinks
8 Bakersfield is a metropolis, so this rural stuff is not
9 helpful.

10 (Laughter.)

11 MR. GOLDBERG: Well, it's when you get out to you
12 know --

13 VICE CHAIRMAN ASHBURN: It's the urban center of
14 California.

15 (Laughter.)

16 MR. GOLDBERG: Right. I've spent some time
17 there. It is quite a --

18 CHAIRMAN PERATA: Yes.

19 (Laughter.)

20 MR. GOLDBERG: I've gotten some good food.

21 (Laughter.)

22 MR. GOLDBERG: In any case, we think that really
23 ignored major concerns of consumers and businesses because
24 when rural business de-averaging is happening as we speak,
25 and we think that -- and rural telephony is extremely

1 important as you know in terms of it being competitive at
2 all with some of the advantages of urban areas, we believe
3 was a huge mistake, but I think it was part of accepting
4 wholesale a deregulatory framework that said, you know,
5 we're not going to look at these issues very careful.
6 We're just going to deregulate on behalf of large
7 industry.

8 And, again, that may be a more substantive
9 difference rather than one that raises the procedural
10 issues, but the procedural issues certainly are there as
11 well.

12 With regard to the Consumer Bill of Rights -- and
13 as I said, Mr. Chairman, cut me off if I'm going on too
14 long.

15 CHAIRMAN PERATA: Yes, Senator Gil -- Senator
16 Gilbert.

17 (Laughter.)

18 CHAIRMAN PERATA: It's my first day back.

19 VICE CHAIRMAN ASHBURN: He goes by his first
20 name.

21 COMMITTEE MEMBER CEDILLO: So I'm a little
22 concerned about this area. The ruling was such that it
23 conflicted with a previous order?

24 MR. GOLDBERG: Correct. The Commission issued --

25 COMMITTEE MEMBER CEDILLO: The fine and then the

1 order, right?

2 MR. GOLDBERG: Correct.

3 COMMITTEE MEMBER CEDILLO: Now, I'm just not
4 clear on why or how that overrules that? I mean, if
5 there's a conflict and a conflict emerges, then what's the
6 process to reconcile that?

7 MR. GOLDBERG: Well, the process occurred this
8 way, when the language went in, which arguably said
9 everybody should be under the same marketing orders, the
10 Commission -- AT&T filed an advice letter saying everybody
11 is under the same marketing orders, therefore, our burden
12 is relieved.

13 COMMITTEE MEMBER CEDILLO: Right. I mean, that
14 makes sense. I'm AT&T. I objected --

15 MR. GOLDBERG: Look at this --

16 COMMITTEE MEMBER CEDILLO: There was a ruling and
17 a finding. I objected, but now you've got a final order.
18 I'm trying to comply for a period of years, and now the
19 rules change. And so, of course, I'm going to say, well
20 the rules have changed, I'm no longer under that directive
21 or there's a conflict, how do we reconcile that?

22 MR. GOLDBERG: Right and there was some question
23 about that. That asymmetric marketing order paragraph,
24 there's some -- and I was not present and privy to it, but
25 there was some debate about whether it got really any full

1 hearing or its meaning was understood.

2 So let us assume, even if it did and its meaning
3 was that -- its meaning with regard to AT&T was certainly
4 not understood. So AT&T sees this language or, you know,
5 may have asked for that language as we ask for our pieces
6 of a decision, and sees this language and files in the
7 advice letter. Had there been no objection to the advice
8 letter, their letter would have stood. However Department
9 of Rate Payer Advocates in turn objected to the advice
10 letter.

11 So it went to the Commission. Now, at that
12 point, from our perspective and from, I think, most
13 procedural perspectives, a major order -- complaint order,
14 fine and ordering of the decision -- of a prior decision
15 needed to be heard by the Commission in a full proceeding.
16 Should we elimit -- is there basis, is there evidence for
17 eliminating these marketing orders.

18 It never happened. No full proceeding. On a 3
19 to 2 vote with Commissioner Brown and Grueneich
20 dissenting, the advice letter, with some modifications,
21 was upheld on November 30th. So that there was never a
22 hearing that AT&T now should be free of these advice
23 letters. There was never an understanding in the uniform
24 regulatory framework process that that paragraph meant
25 that a prior decision had -- a major decision of the

1 Commission had been overturned. And yet there was an
2 opportunity to rectify that by which the Commission should
3 have said, oh, no we don't intend to overturn this major
4 hearing -- major order, we will have evidentiary hearings
5 and find out whether AT&T should still be subject to these
6 marketing orders or not.

7 It never happened. The advice letter with
8 modification was accepted. There was another subsequent
9 decision that said well, we'll look at this prospectively
10 for other carriers. But as of now, AT&T, this major
11 decision that controlled marketing abuses, is off the
12 hook. And you want -- we asked for some objective reading
13 of that. I believe that the Committee consultants in the
14 Senate have looked at that and said no, the marketing
15 orders are now -- have been basically tossed out. We're
16 not back to status quo before.

17 And so without a hearing this major decision was
18 overturned based on one paragraph that did not have, at
19 least as we understand it, much discussion inserted into a
20 decision, followed up by AT&T, they're gone. That to me
21 is really not consistent with a process, and it looks like
22 fairly that we're doing the bidding here of AT&T. They've
23 wanted this for a long time. They wanted it and they get
24 it without process.

25 COMMITTEE MEMBER CEDILLO: Well, I mean, let's

1 focus in on the issue. I mean, of course AT&T wants
2 parity or Equal standing with other companies. I mean,
3 they're in competition. They don't want to be
4 disadvantaged, right, by the rules or the regulations.

5 So we didn't go back to the status quo. And
6 we're somewhere between the status quo and no regulations
7 or some regulations?

8 MR. GOLDBERG: Well, they still have some minor
9 disclosures. Their second advise letter called for some
10 disclosures. But what they don't have is the order to
11 stop steering customers towards higher price service
12 options, to stop low-balling prices by failing to include
13 applicable recurring and nonrecurring charges, to stop
14 offering only bundles in response to customer requests for
15 a single service. Those are the kinds of things they were
16 doing. Those are the kinds of things they were called to
17 task for. They were not giving information about what the
18 lowest priced service was. And, in particular, some of
19 them call up and say I've got a billing problem and they
20 would be sold a whole lot of stuff, and without adequate
21 information. That was a major complaint case. This was
22 all, you know, tons of evidence on this issue that they
23 were doing this.

24 To relieve them from the burden that says you've
25 got to stop failing to state recurring charges, you've got

1 to stop steering them towards higher priced options,
2 promote -- pushing bundles. To relieve them, one would
3 hope that there was a substantial hearing that would say
4 we are looking for -- and AT&T could petition the
5 Commission and say, we are looking for relief. We're good
6 guys now. We ain't doing this anymore, you, know and
7 we'll give you --

8 COMMITTEE MEMBER CEDILLO: They don't want to be
9 disadvantaged compared to other competitors.

10 MR. GOLDBERG: Right. And we should be with
11 others. Although, there isn't much competition in the
12 AT&T service area for wire line. And that said, they
13 could provide that. We have a hearing. They could say
14 we're good guys. We're not going to do this anymore. But
15 instead, there was an insertion of a paragraph in an
16 advice letter and approval of those circumstances. And
17 that's really where we failed. And, you know, we think
18 that Commissioner Chong has failed in her duties to really
19 consider the broad implications of these policies and were
20 done instead in a way that violated the process, which is
21 a major concern I have to say.

22 COMMITTEE MEMBER CEDILLO: I understand with
23 respect to the results, but is this something that's
24 structural? I mean, because I'm concerned --

25 MR. GOLDBERG: I don't think it's structural.

1 COMMITTEE MEMBER CEDILLO: Let me finish my
2 point. I'm concerned that that seems to be something
3 that's as much structural as it is a question of
4 discretion. Obviously, if she has a different perspective
5 in terms of trying to construct a level playing field for
6 the industry, right? I mean, that's a philosophical view
7 that you and I may disagree with it, but it's a view that
8 she has. And then the conduct seems to be consistent with
9 that in terms of bringing forth the changes?

10 MR. GOLDBERG: No, because you had a major
11 decision, a major set of orders on a --

12 COMMITTEE MEMBER CEDILLO: No, I understand that.

13 MR. GOLDBERG: -- single major company. And to
14 have this done with an insertion of a paragraph that was
15 not discussed or vetted and an advice letter ignores, I
16 would say, many, many years of process. And ultimately
17 had there been a proceeding in which we say should we let
18 AT&T off the hook from these orders? And my guess is that
19 based on an honest disagreement we would have said no and
20 Commissioner Chong would have said yes. However,
21 procedurally, that never happened. There is no evidence
22 on the record.

23 COMMITTEE MEMBER CEDILLO: Thank you. I
24 understand that, Mr. Goldberg. But my point is this, I'm
25 looking for a duty and a breach of duty is what I'm

1 looking for. Is this a duty that she had and a breach or
2 is this a structural problem, because it seems to me -- I
3 mean, it seems to me that there should have been some
4 criteria, some mandate that once this conflict emerged,
5 right, that then there would be some resolution and
6 somebody was duty bound to do that. You're asserting that
7 she had that duty, that there was a breach and I'm just
8 trying to figure that out.

9 MR. GOLDBERG: You know, I think we would not be
10 making this assertion had it not been for Commissioner
11 Brown's dissent, because he was way closer to the
12 situation than any of us ever could have been. And his
13 dissent argues that there was misrepresentation with
14 regard to the meaning of that paragraph and that it could
15 have been made right with regard to the outcome.

16 And so I will refer you not to anything I was
17 privy too because I was not. I would refer you to
18 Commissioner Brown's dissent, which is a scathing on this
19 very question about willy-nilly ignoring consumer
20 interests without due process. And that's where I think
21 our evidence -- my evidence to you has to lie. And he was
22 there at the URF decision and was there at the approval of
23 the advice letter, and then issued that scathing dissent.

24 COMMITTEE MEMBER CEDILLO: Is Commissioner Brown
25 here?

1 CHAIRMAN PERATA: You know, no I don't think
2 Commissioner Brown is here. It's highly unusual. I mean
3 you quoted him liberally, but --

4 MR. GOLDBERG: So there is where I would go on
5 that. And I think it's very very -- we would say, we
6 would go along with that dissent and that really is the
7 hard information that I'm referring to.

8 CHAIRMAN PERATA: You may sum up.

9 MR. GOLDBERG: I may sum up. I was going to go
10 to the Bill of Rights, and just --

11 CHAIRMAN PERATA: It's your call. It's your last
12 warning.

13 MR. GOLDBERG: All right. The Bill -- just say
14 if there are --

15 CHAIRMAN PERATA: I'm sure somebody else will say
16 the rest of it in any case.

17 MR. GOLDBERG: Okay. On many issues on the Bill
18 of Rights, we have fully disagreed. I just want to say
19 that if anything else does not come out of this hearing, a
20 commitment that if there is marketing in a given language
21 that there be full disclosure of terms and conditions of
22 the contract, both spoken and written in that same
23 language. And when we talk about in language and bills in
24 that language, when we talk about in language protections,
25 it gets very vague.

1 Yeah, consumer pamphlets are going out in many
2 languages without the substantive Bill of Rights
3 protections, but the contracts are not going out. There's
4 marketing in the language and you're getting an English
5 language contract. And hopefully, we can get a commitment
6 on that issue, because I don't believe we will disagree
7 probably forever on the fact that there needs to be
8 substantive Bill of Rights' protections on cell phones
9 that have been wiped out and we've tried to do in the
10 Legislature.

11 So, yeah, I always have more to say, Senator
12 Perata, but thank you for your time.

13 I really appreciate it.

14 CHAIRMAN PERATA: Excellent. Thank you.

15 Next. Ah, a veteran.

16 (Laughter.)

17 MS. DOWDEN: I'm Hellan Roth Dowden representing
18 Richard Chabran from the California Community Technology
19 Policy Group. And we are to recognize the qualifications
20 of Commissioner Chong. She's well qualified. However,
21 our concerns have been that she has been -- has not been
22 open on some of the issues that we're -- there are
23 concerns.

24 The CCTPG, the Community Technology Policy Group
25 represents low-income consumers and low-income

1 communities. We represent the people on the other side of
2 the digital divide. And while she has made great efforts
3 to try and open some of the pathways, we still see
4 concerns, for example, with some of the hearings that were
5 recently held on 2987, where it was very difficult for
6 some of the community groups to act as quickly as we
7 were -- we were just not able to act and respond as
8 quickly, and we felt things were sort of rushed through.

9 And I would also like to say what Lenny Goldberg
10 had also said on the Consumer Bill of Rights, we represent
11 people in low-income communities. They come into the
12 centers. They've been marketed in languages other than
13 English. They don't speak English well. They sign a
14 document and they end up paying for something for 2 or 3
15 years, which they absolutely can't afford. And it's
16 affecting the health of the children, their ability to pay
17 their rent and many other things, because they've been
18 talked into these plans that are not in the language that
19 they actually speak. When the people who are selling
20 these things sell it to them in a language, they sign a
21 paper and it's not what they think they've signed.

22 So we are hoping that that will change in the
23 Commission, that there will be new openness to really
24 resolving that problem. It's tragic what can happen to
25 families when they get into that circumstance. And we'd

1 like to see the Commission be more on the side of
2 consumers. We're going to be losing one of the better
3 consumer advocates on the PUC now. And we're worried now
4 that we're going to have a very laissez faire commission
5 that isn't going to take seriously the needs of people, so
6 we can bring them into the mainstream using computers and
7 using technology and all the new kinds of services that
8 are available.

9 Thank you for time and consideration.

10 CHAIRMAN PERATA: Thank you.

11 MR. HERNANDEZ: Good afternoon, Mr. Chairman and
12 members. Ignacio Hernandez on behalf of the Consumer
13 Federation of California. We must regretfully oppose this
14 nomination and confirmation.

15 The Consumer Federation is a coalition of
16 individuals and organizations throughout the state that
17 work on consumer issues on a variety of levels. I'm going
18 to limit my comments to a couple of areas.

19 You know, we made this decision with an eye
20 towards what is the role of the PUC in 2007 and beyond.
21 We've seen the last few years, and even just in the last
22 few months less and less competition. We're seeing
23 greater mergers of corporations at the national level,
24 which has impacted Californians here, and consumers having
25 fewer and fewer choices actually, in particular in

1 telecommunications, which is what the CFC is really
2 focused on.

3 And keeping that in mind when we look at
4 appointments to the PUC,* we have to understand that there
5 were only 5 Commissioners who are responsible to represent
6 all Californians and all interests, not simply the
7 industry. And if you look back at the history of the CPUC
8 there's never been a shortage of Commissioners willing to
9 fight for the industry and the concerns of industry.

10 What we've had to struggle for and scratch and
11 claw for is to have some voice for consumers on the CPUC,
12 and that's where our opposition comes in, because as this
13 Commission becomes more and more important, more and more
14 powerful, and impacting more and more Californians in so
15 many more ways, as phones become part of your everyday
16 life, we need to elevate the standard of by which we
17 measure which Commissioners we're going to support, which
18 Commissioners we're going to confirm and move forward
19 with.

20 And I think unfortunately Commissioner Chong has
21 shown her opposition to the telecommunications Bill of
22 Rights, as one issue that we've worked on diligently. And
23 just briefly this Bill of Rights was put together after 4
24 years of work in communities throughout California rural,
25 urban, Bakersfield. Everyone got together, heard from

1 real people, seniors, the disabled, communities of color,
2 and it was one of the most thorough works of any
3 Commission and board in the State of California. And at
4 the end of that 4 years, they put together a Bill of
5 Rights, which was not simply education for consumers, it
6 was hard and fast rules to keep corporations in line and
7 industry in line to say that every consumer has certain
8 protections. You cannot have your level of service go
9 below this. We're making sure that we know if you have
10 coverage. You're making sure that if someone wants to
11 cancel his or her service within 30 days, they have that
12 right.

13 There were a number of other issues that were
14 adopted by CPUC. Unfortunately, Commissioner Chong voted
15 against that and to repeal that and has been working quite
16 diligently on the alternative, which is this education
17 piece. And much of her praise and support about working
18 with communities and holding hearings throughout the state
19 is true, she has done that.

20 Unfortunately, it has been within the context of
21 this community education piece, which was adopted as an
22 alternative to the Telecommunications Bill of Rights. So
23 what we have now is instead of giving consumers the
24 protection of the law and regulations, we're now giving
25 them information. And let me tell you, each one of us

1 knows that when you look at a contract for cell phone or
2 if you look at the alternatives or if you look at rate
3 plans and you try to figure out whether you can switch
4 your phone and you're charged more, or whether you can get
5 out of your 2-year contract without a fee, it's very, very
6 difficult for all of us, and it's certainly extremely
7 difficult for everyday Californians.

8 So we really need to have commissioners who are
9 going to be committed not just to represent the industry,
10 because we know that will happen with every commissioner.
11 We don't have a problem with that, but we need
12 commissioners who are going to show that they will stand
13 up for consumers in the most difficult times. Everyone
14 agrees we should fight against fraud, absolutely, so does
15 the Commissioner.

16 But when it comes -- when push comes to shove,
17 and the industry wants to repeal protections for
18 consumers, where are these commissioners going to be,
19 where is this commissioner going to be? And unfortunately
20 her track record in the last year shows that she will not
21 be with consumers in the way that we need them.

22 It's time that we look to the PUC with a stronger
23 eye and we say, you know, we have to hold you to a higher
24 level. There's 5 commissioners. How are we going to
25 ensure to consumers that our views are well represented

1 and we have equal footing as the industry. Unfortunately,
2 this appointment and this confirmation will not do that.
3 It will continue with the trajectory of the Commission
4 which is towards free market, less regulations, less
5 consumer protections. And for everyday Californians in
6 all of your districts, how are we going to explain that
7 they have to now battle against all these
8 telecommunication companies on their own and ensure that
9 they're not being ripped off. It's simply too much to ask
10 of everyday Californians, and it's our responsibility to
11 hold our Commissioners to much higher standards. So for
12 those reasons, we unfortunately must oppose this
13 confirmation.

14 CHAIRMAN PERATA: Thank you.

15 COMMITTEE MEMBER CEDILLO: Senator.

16 CHAIRMAN PERATA: Yes.

17 COMMITTEE MEMBER CEDILLO: Can you help me on the
18 substantive distinction between the previous Bill of
19 Rights and the new ones that were implemented?

20 MR. HERNANDEZ: Yeah. The main provisions of the
21 Bill of Rights, there had to be a map of noncoverage areas
22 provided to cell phone consumers. There was a 30-day
23 protection, so if you get a new service, a new cell phone
24 company, you are guaranteed 30 days to try that service
25 out to see if it met your needs, it met your coverage

1 needs and then you could return that cell phone and
2 terminate your service.

3 Those were kind of the big ticket items. There
4 were a number of other protections. There was the
5 in-language, which has already been talked about. What we
6 have now? None of that. Instead there's a community
7 education initiative, which is let's go out and educate
8 consumers about all the different companies, all of their
9 plans, what their options are, how to file complaints and
10 one of the things that -- one of the reasons why the Bill
11 of Rights was so important for the PUC to adopt, is that
12 consumers were left with really very few options, either
13 file a complaint with the PUC, which you've already
14 there's a backlog of, you know, now it's down to 12,000 or
15 13,000 or actually file litigation.

16 And one of the ways in which consumers were
17 starting to fight back against hidden fees and hidden
18 taxes or mislabeled fees and taxes -- which was another
19 part of the Bill of Rights, is making sure that labeling,
20 if it's not a State tax or a government tax, it can't be
21 labeled some sort of government fee, which was very tricky
22 language in there -- was to actually go to court.

23 So there have been lawsuits over the last few
24 years to force companies to have kind of truth in billing,
25 and that's what it took. So we don't have anything from

1 the Bill of Rights which was adopted by the PUC. All of
2 those provisions are gone. And so we've tried
3 legislatively to get some of those through. And
4 unfortunately Commissioner Chong opposed those bills,
5 voted to oppose those bills. And so it really
6 demonstrates a very huge gap in policy direction, are we
7 going to have a balance of sensitivity to the industry and
8 also have protections for consumers. And the more you
9 give the industry, the more you ought to give consumers,
10 or are we simply going to say, we'll we're going to trust
11 the industry to do what's right.

12 And, in fact, I may be paraphrasing, but there's
13 a quote from Commissioner Chong that says that part of her
14 decision was for the Bill of Rights we're going to give
15 industry a chance to do what's right. And so this body
16 needs to decide is that the direction we want the PUC to
17 go?

18 And so to go back to your original question,
19 there's nothing in the original Bill of Rights that's in
20 current practice. It was simply let's provide information
21 to consumers as best as we can and that process is moving
22 forward. It is fairly thorough depending on who you ask.
23 But it's simply not an appropriate or reasonable
24 substitute for --

25 COMMITTEE MEMBER CEDILLO: The distinction then

1 is that current Bill of Rights is more preemptive, more
2 focused on a smarter consumer choice rather than
3 responsive or reactive?

4 MR. HERNANDEZ: It was actually protection. It
5 was saying companies cannot do this. They cannot -- you
6 have the right to tell your company you're going to
7 rescind your contract without some sort of fee. You have
8 a right to have a coverage map. You have a right to have
9 language -- you know, have contracting the language in
10 which you negotiated. You have the right, you know, so on
11 and so forth.

12 COMMITTEE MEMBER CEDILLO: What was the
13 implementation for that? Was there some system in place
14 to effectuate that.

15 MR. HERNANDEZ: I'm not sure of your question.

16 COMMITTEE MEMBER CEDILLO: So you have a right to
17 something, but how do you exercise that right? How was
18 the consumer knowledgeable of that to -- how could they
19 enforce that?

20 MR. HERNANDEZ: Well, there's a number of ways in
21 which that information was getting out. The consumer
22 groups were putting that out there. You know, there were
23 workshops. I know our group and other consumer groups
24 were putting that information out there, but it never
25 really was able to take hold because the PUC put it on

1 hold and shelved it. So we never really got to see that
2 fully implemented.

3 And so now what we have is instead to say well,
4 let's let consumers -- just give them as much information
5 as possible about, you know, cell phone companies and let
6 them decide what they want to do. And if -- so now, if
7 say I get a new cell phone, and it's up to whichever
8 company gives me the best, you know, 30-day, 15-day,
9 10-days policy, but then they also have -- and I've had
10 this experience just in the last few months. They told
11 me -- I had 6 different people in the same company tell me
12 I did not have a certain number of days to cancel my
13 contract. And I told them no, I know that I do. I know
14 this is what your company does, because I've worked on
15 these issues. But there was no statute, there was no
16 regulation that I could turn to to show them look I have
17 this right. And that's one of the deficiencies in
18 allowing the industry to dictate and just to do it
19 themselves without any kind of regulatory language. And
20 at the end of the day, they couldn't even show me in
21 writing what their policy was. So fortunately I got
22 someone to agree with me.

23 VICE CHAIRMAN ASHBURN: I just want to clarify on
24 the consumer Bill of Rights, especially with the
25 provisions that you referred to on cellular service and

1 cancellation of contracts and non-service maps and those
2 kinds of things. Were those adopted rules by the PUC?

3 MR. HERNANDEZ: Yes.

4 VICE CHAIRMAN ASHBURN: And how long were they
5 adopted and in place?

6 MR. HERNANDEZ: If I'm not mistaken -- and I
7 apologize my guy wasn't in the Prius on the way over here,
8 but he didn't make it to testify. He got stuck on the
9 way.

10 VICE CHAIRMAN ASHBURN: That will teach him for
11 driving a Prius.

12 (Laughter.)

13 MR. HERNANDEZ: If I'm not mistaken, I believe
14 before it was actually implemented it was shelved and
15 maybe someone can --

16 That's right, it was one year. My staff knows
17 better than me.

18 VICE CHAIRMAN ASHBURN: So these were regulations
19 that were adopted and in place for one year.

20 MR. HERNANDEZ: That's correct.

21 VICE CHAIRMAN ASHBURN: And then what was the
22 format by which they were rescinded or superceded?

23 MR. HERNANDEZ: The PUC took -- there was a
24 motion --

25 VICE CHAIRMAN ASHBURN: Superceded by what from

1 the PUC? I understand by this education approach as
2 you've described. But in what format, was that a vote of
3 the PUC?

4 MR. HERNANDEZ: Yes, it was.

5 VICE CHAIRMAN ASHBURN: To say we have these,
6 we've tried them for a year, now we're going to adopt
7 this?

8 MR. HERNANDEZ: Well, it wasn't --

9 VICE CHAIRMAN ASHBURN: And then I mean what I'm
10 really getting at is what role did our nominee play, if
11 that's what occurred?

12 MR. HERNANDEZ: My understanding is that she came
13 in kind of the second half of the proceedings. The PUC
14 shelved it at one point and then it was going to be voted
15 on. It was going to be looked at by --

16 VICE CHAIRMAN ASHBURN: So it had already been
17 voted to be shelved?

18 MR. HERNANDEZ: Temporarily, correct. And then
19 there was a --

20 VICE CHAIRMAN ASHBURN: Before she had even
21 arrived?

22 MR. HERNANDEZ: If I'm not --

23 VICE CHAIRMAN ASHBURN: So the allegation is that
24 she shelved it. I think that's what you said to Senator
25 Cedillo, but that isn't the case.

1 MR. HERNANDEZ: Well, there was a vote --

2 VICE CHAIRMAN ASHBURN: The commission had
3 already voted before she was even on the Commission?

4 MR. HERNANDEZ: There was a vote, but then there
5 was a subsequent vote to finalize what was going to be
6 done. And her vote was to end the Bill of Rights.

7 VICE CHAIRMAN ASHBURN: So to hold her
8 responsible for the repeal of the former Bill of Rights is
9 really unfair, if she was not on that Commission and did
10 not cast that vote.

11 MR. HERNANDEZ: There were commissioners who did
12 not -- on the final vote, she voted.

13 VICE CHAIRMAN ASHBURN: I mean, I can just -- you
14 know, I have my own view about the policy. I happen to
15 think people ought to be able to cancel contracts. I
16 happen to think that consumers ought to know exactly what
17 they're buying. So I happen to like those rules myself.
18 I would vote for them here in the Legislature. But that's
19 not the issue here, the issue is procedurally did this
20 Commissioner -- you know, did she participate in shelving
21 this, regardless of what is said? The answer is she did
22 not because she wasn't on the Commission.

23 CHAIRMAN PERATA: Well, perhaps we'll allow her
24 to answer that for herself.

25 VICE CHAIRMAN ASHBURN: That's a good idea.

1 MS. CHONG: Thank you, Senator. Now, my
2 understanding is that the repeal of the prior Bill of
3 Rights rules was in 2005 and it was by my predecessor
4 Commissioner Susan Kennedy, and it was before I became a
5 Commissioner on January 12th of 2006.

6 VICE CHAIRMAN ASHBURN: Thank you.

7 CHAIRMAN PERATA: Thank you.

8 MR. GOLDBERG: On this issue?

9 CHAIRMAN PERATA: I think we're done.

10 VICE CHAIRMAN ASHBURN: I think we've heard
11 everything.

12 CHAIRMAN PERATA: Anything further in opposition?

13 Seeing none, Mr. Peters, would you like a few
14 minutes to rest your hands?

15 THE REPORTER: Sure.

16 CHAIRPERSON PERATA: Is that Peters, is that
17 correct?

18 THE REPORTER: Yes.

19 CHAIRMAN PERATA: And welcome.

20 We're going to take a brief break for liability
21 purposes.

22 (Laughter.)

23 (Thereupon a recess was taken.)

24 CHAIRMAN PERATA: The Committee will reconvene.
25 And I was remiss in not pointing out that Cal won the

1 Holiday Bowl.

2 MS. CHONG: Go Bears.

3 CHAIRMAN PERATA: Go Bears.

4 It was the 13th bowl of 42 bowls.

5 What I'd like to do now is go through a series of
6 questions about things that have been brought up by the
7 opposition and ask you to just briefly respond.

8 Probably first and more foremost is your take or
9 view of what happened with the Uniform Regulatory
10 Framework that was reported.

11 MS. CHONG: Yes. I'd be pleased to cover that
12 issue.

13 The first controversy is whether the quote
14 "paragraph" was snuck into the decision or not and this
15 was raised by Commissioner Brown in his dissent. And I
16 would like to address that first, because I think that
17 goes straight to my integrity.

18 The way the Commission process works at the PUC
19 is that the assigned commissioner on the docket puts out a
20 proposed decision publicly and you circulate to the public
21 and of course the other Commissioners' offices. Then the
22 public has a chance to comment on the proposed decision.
23 And then everybody looks at each others comments and we
24 have another comment round called reply comments.

25 On the particular URF decision the reply comments

1 were due 2 days before the actual vote, which was August
2 24th. So when the reply comments came in, one issue that
3 was raised is that we had been talking about whether
4 customer disclosures contained in the rules should be
5 removed, so that the incumbent phone companies, such as
6 AT&T and Verizon would have comparable customer disclosure
7 rules to the competitors.

8 Just as an example, the AT&T company had 40
9 minutes of required scripts of marketing disclosures.
10 Whereas, the competitive companies had approximately 20
11 minutes and the Internet phone companies have none,
12 because they're not regulated by the PUC through federal
13 preemption.

14 So the issue had been raised through the
15 proceeding, and I want to emphasize that, because this was
16 an issue that was discussed in briefs. It was listed in
17 the issues matrix that the parties themselves prepared and
18 it was a live issue.

19 So in one of the comments AT&T told us that we
20 had failed to decide the issue in what's called an
21 ordering paragraph. This is the paragraph that actually
22 orders things in the PUC decision. And so they and DRA
23 made comments about that issue. So my staff appropriately
24 revised the decision to put in a decision -- an ordering
25 paragraph in the decision that decided this issue. And it

1 was a minor issue in the proceeding quite frankly.

2 We did redline this change along with many other
3 changes and we Circulated it to all the Commissioners
4 offices, as per our normal procedure and the memo on top.
5 And the memo on top told the other Commissioner's offices
6 that there were many changes in this document because of
7 the vast scope of the comments and reply comments, and to
8 review it carefully, but that all the changes were
9 redlined including that change.

10 So there was approximately 48 hours between the
11 time that document circulated to every commissioner's
12 office for Commissioner Brown, Commissioner Grueneich and
13 their advisors -- they each have 3 professional
14 advisors -- to review those changes before they voted.

15 So I wanted to let you know that this is the
16 process. And they did have it in their office. They
17 could have and should have reviewed it before they voted
18 on it obviously. And if they did not, that's not
19 something that I could have controlled.

20 Now, as noted, 3 weeks after we voted the uniform
21 regulatory framework's decision, AT&T did file an advice
22 letter relying on this paragraph to remove certain
23 language in their tariff involving customer disclosures.
24 Now unbeknownst to me this language they were removing had
25 something to do with a sales practice enforcement decision

1 that occurred 6 years ago. Now, I was not on the
2 Commission 6 years ago. I was not practicing before the
3 Commission 6 years ago, so I was not aware of it.

4 When the advice letter was filed, the issue was
5 raised by Commissioner Brown, who had served as the
6 assigned commissioner in that case 6 years ago and by
7 various parties, such as TURN, DRA and others. And so we
8 began discussing what we should do about it.

9 So, you know, just so you understand the scope of
10 it, we were trying to figure out what the prior decision
11 was, how that impacted the tariff, whether there were
12 other issues that would be raised as to other companies
13 that might rely on this paragraph to remove enforcement
14 actions.

15 But we did not realize that this would be a side
16 product of this paragraph. It was an inadvertent product
17 of this paragraph. About 5 weeks later, AT&T filed a
18 second advice letter replacing some but not all of the
19 language. And in the meantime also an application for
20 rehearing on the main order was filed. The telecom
21 division made a decision that they wanted the legal
22 division to handle the advice letter protest because the
23 larger decision had an application for rehearing and the
24 very same issues on these advice letters were raised. So
25 the issue was moved to the legal division to address the

1 application for rehearing.

2 We did act, the Commission, on November 30th and
3 we left in place the second AT&T advice letter, which
4 replaced some of the disputed language. We relied heavily
5 on the fact that we placed 2 major issues into the next
6 phase of the proceeding, because of this problem.

7 TURN misspoke when they said we were only going
8 to look at whether all competitors should have equal
9 customer disclosures. That is one of the issues we will
10 now look at in URF phase 2, but we are specifically
11 looking at this AT&T issue, because these parties have
12 raised the issue of should AT&T be able to lift
13 enforcement actions through an advice letter, through this
14 new decision. We made a decision that we would absolutely
15 look at that issue too, to see, 6 years later, are they
16 still guilty of marketing abuses, should perhaps the
17 enforcement be relaxed? I mean, it will be a factual
18 inquiry. We will look at it with an open mind and we will
19 look at it vigorously.

20 So the allegation that TURN made that we were not
21 going to address this issue at all is not true. We are
22 going to address it. In fact, the proceeding has already
23 started. We've put out a scoping memo. It is clearly
24 within the issues and we intend to look at it vigorously.

25 CHAIRMAN PERATA: I have as a related question to

1 this, there are a number of senators under the impression
2 that you said straight away that this was fixed, and, in
3 fact, it had not been fixed. I mean, I guess what you
4 just said was not made clear. I don't know how you
5 address that, but I wanted to let you --

6 MS. CHONG: Well, I would like to address it.

7 CHAIRPERSON PERATA: Okay.

8 MS. CHONG: It had been a little bit since I had
9 looked at the second AT&T advice letter, which put some of
10 the provisions back in. And I believe that I did misspeak
11 in a meeting with Senator Kehoe and with you that this put
12 back all the protections. In fact, it only put back some
13 of the protections. It looked to me like it was the key
14 protections that were concerned about in the sales
15 practice decision. But I did misspeak, and I wanted to
16 set the record straight here today.

17 CHAIRMAN PERATA: Thank you.

18 There have been -- I think you've addressed the
19 process issue. I mean, I agree with you that anybody who
20 makes a claim that you have basically dealt from the
21 bottom of the deck, that's a serious allegation.

22 And am I to understand that the previous -- that
23 Commissioner Brown originally had jurisdiction in this
24 area, is that right?

25 MS. CHONG: He had -- he was the assigned

1 commissioner on the sales practice decision in the year
2 2000. Now, all the other commissioners have come on the
3 Commission since that time, so the other 4 of us were not
4 there during that era.

5 CHAIRMAN PERATA: Is the ring bearer on that one.

6 MS. CHONG: That's right.

7 CHAIRMAN PERATA: There's been some questions
8 raised about worker safety, although I see CWA was here in
9 support. But, you know, one of the major tenants of the
10 philosophy I practice politically is worker's rights and
11 protections. And there was an issue that came up with
12 regard to -- simply put, that wireless companies don't
13 want to have any regulation in this area and there's a
14 certain standard that we expect. So maybe you could talk
15 about some polls or something.

16 MS. CHONG: Yes. This issue has to do with
17 placing telecommunications facilities on electric polls.
18 And this is a case that's been ongoing for 5 years, I
19 believe. And it was a case handled by Commissioner Brown.
20 I wasn't here for the first 4 years, but I had understood
21 they had reached a certain stalemate between the parties.

22 And to give you one example of the key issue is
23 that one of the things that the judge was thinking of
24 ordering in the proposed decision was a shut-off switch of
25 the wireless facilities on the poll to ensure lineman

1 safety. The wireless companies agreed that during an
2 emergency, of course, you should be able to turn it off,
3 but in a non-emergency situation, they wanted advanced
4 notice, so that they could turn up other surrounding cell
5 sites to cover that area or put in a temporary cell site
6 if it was a really important wireless facility, so that if
7 a cellular user who was in that area tried to dial 911,
8 they would be able to reach 911 and not inadvertently not
9 reach 911 because it's off.

10 So when I saw this issue -- it's not my case -- I
11 was concerned about it, because I felt that, of course, we
12 must safeguard lineman safety. Nothing more important
13 than that. It's a very dangerous job. But number 2 I
14 also felt like, you know, we need to make sure that when
15 someone dials 919 on their cell phone, they reach 911. So
16 I pressured both sides, quite frankly, into going back to
17 settlement -- they had been trying for years -- and push
18 the wireless carriers particularly very hard to come to an
19 agreement voluntarily that would satisfy everybody. And
20 I'm happy to report that they did come to a complete full
21 party settlement. CWA, IBEW, the Commissions own safety
22 division, the wireless carriers, the electric utilities,
23 everybody settled.

24 And so we are now in the process of trying to
25 either approve the settlement, or, as Commissioner Brown's

1 alternate had, rejecting the settlement. So it's a live
2 proceeding before us right now. But that is what
3 happened.

4 CHAIRMAN PERATA: Okay. I've known Lenny
5 Goldberg for longer than either one of us want to admit.
6 And while he's often exuberant and given to a little
7 hyperbole, unheard of in this building, of course, I have
8 a lot of respect for his career and his integrity. And
9 he's very concerned about, you know, I think putting --
10 simply put that there is a -- you are not hard-wired into
11 consumer awareness and fairness.

12 How would you characterize -- I mean, I've heard
13 things in support that would allay that. But, you know,
14 somebody that's been there for 15 years has a pretty good
15 beat on a lot of things. And unfortunately, I know him
16 well enough to respect him. You have to take 6 years.
17 But I'd like you to respond that, just generally your
18 philosophy on consumers and on regulatory -- the
19 regulatory scheme within the fair market.

20 MS. CHONG: I appreciate that, because I feel
21 that there's this dichotomy that they're putting up that
22 if you're somehow favoring a competitive market scheme
23 that you therefore don't care about consumers. And I
24 don't think that's true.

25 What the Commission is doing right now is

1 rethinking its role. You know, we have competitive
2 markets. It's the national law and it's the State law.
3 And so we have all these new players coming in. And so
4 what the Commission is doing now is saying, okay, we need
5 to withdraw from rate pricing regulation, where there is
6 competition -- so, for example, in the business area --
7 but for consumers, the low-income consumers, we still need
8 to protect them.

9 And in fact the URF decision continues to protect
10 basic rate players. We froze the basic rate until 1/1/09,
11 a date that also was the same date that the Legislature
12 chose to freeze the basic rate in the recent cable bill,
13 AB 2987.

14 But secondly, the PUC hasn't just sat there and
15 said "Oh, we're going to educate and do something about
16 enforcement." For example, there was a Cingular Wireless
17 case, a complaint case, where Cingular was fined \$5
18 million for marketing -- for abuses. We always have had
19 statutes that say if a dealer goes into a minority
20 community and tricks someone in Spanish into buying
21 something when the English contract is different, that's
22 just fraud and misrepresentation. And we already have
23 plenty of PU codes on the book that we could use to
24 investigate and shut down those types of bad actors.

25 So we're still doing that. We've always done

1 that. We always will do it. In fact, we hired a new
2 telecom fraud unit to do it faster and better than we
3 apparently have in the past.

4 And so my focus has been how do we improve what
5 the PUC does enforcing against the real bad guys? How do
6 we help the consumer understand all this change, hence,
7 the education? But also it's a trust-but-verify type of
8 situation. You hope the market works, but if it doesn't,
9 the PUC steps in and makes sure that we fix it. That's
10 our job, and we take that very seriously.

11 So I would want to assure this body that I am
12 someone that cares very much about consumers. I think
13 I've done a tremendous amount of consumer-oriented work
14 this year. I have a philosophical difference about
15 competitive markets with some of these consumer groups
16 that have protested. But when you look at my actual
17 record of what I'm really doing for the consumers, I think
18 you will see that I care very much for consumers and
19 particularly the ones that are more helpless.

20 Probably the last thing I want to say is safety
21 net for consumers is our universal service program. We
22 give discounts on phone service to the low-income folks
23 and also to the deaf and disabled community. I don't hear
24 too much noise about that. You know, we need to give
25 these people the most advanced communications technology.

1 Yet, I don't hear the very groups that are criticizing me
2 advocating to get low-income and deaf people better
3 phones. Right now, they only get wired phones, so they're
4 tethered to their house. I'm trying to work to update our
5 regulations so they can have the option of having perhaps
6 a mobile phone or a text pager, so the deaf person could
7 go out and get a job outside the house. These are the
8 kinds of changes that I think are necessary.

9 So we do have some differences, but we're working
10 for the same consumer, but just in a different way.

11 CHAIRMAN PERATA: There was brought up the need
12 to have parity in contract -- you know, you don't want to
13 be sold something in one language and tethered to the wall
14 with the other one. So I understand your -- this is Mr.
15 Peevey's area of --

16 MS. CHONG: Yes, that's right.

17 CHAIRMAN PERATA: -- interest. But what's the
18 status of that now?

19 MS. CHONG: Yes. In the Bill of Rights decision
20 in March, we had heard anecdotes from the Latino Issues
21 Forum and Greenlining about some of the fraud that they
22 said was going on, particularly in the minority
23 communities on contracts. And so we were very concerned
24 about it.

25 We did not have a record, however, at that time,

1 to propose an actual new rule, but we were concerned. So
2 we ordered the staff to look into the issue, what is the
3 law, what are the best practices, what has actually been
4 happening out there, talking to all the community groups
5 to find out what's happened and to report back to us in 6
6 months.

7 They reported back in 7 months. They needed a
8 little extra time, but we got it done in 7 months. And
9 now the staff has drafted a rule-making, which includes
10 proposed rules. And we expect to issue that decision
11 January 11th, which is next Thursday.

12 This is President Peevey's proceeding. I spoke
13 to him yesterday. And he and I both felt that we should
14 be able to achieve a decision at the latest summer of '07,
15 probably about June. And so we have both agreed that this
16 is something that we should be able to finish, since I
17 know there's high interest in this group about it.

18 CHAIRMAN PERATA: Okay. Any questions from the
19 members?

20 VICE CHAIRMAN ASHBURN: I just have one issue
21 that I'd like to raise, and that has to do with nothing
22 that has been brought up today, but I think is essential
23 when we talk about the administration of the PUC, and
24 that's your role as a commissioner/administrator of a very
25 large bureaucracy. And the complaints that I hear from

1 the public and from those who are trying to bring new
2 technologies, better services, lower prices, new
3 technologies, that the PUC is hopelessly trapped in its
4 own bureaucracy, that it can't seem to solve problems, the
5 staff is slow to respond, that it's just -- it doesn't
6 work very well.

7 So I want to know what your ideas are about what
8 you're going to do about that, because those Commissioners
9 are -- you're it. There's nobody else. And anyway, if
10 you'd address that, I'd really appreciate it.

11 MS. CHONG: I share your concern about the pace
12 of decision-making at the PUC. And, in fact, when I was
13 suggested for this job, I have friends that are
14 practitioners in front of the PUC that I practiced with
15 back in the eighties. And they all rushed up and said,
16 Commissioner, you've got to fix the speed at which the
17 Commission does things, because it's just excruciating.
18 It goes into a black box and we never know what's going
19 on.

20 So part of what I've been doing when I'm there
21 is, A, I'm trying to be accessible to the parties, so if
22 they call me, I do my very best to see them. So they know
23 what's going on, because a lot of Commissioners don't.
24 They're busy.

25 Two, we've been working very hard to really

1 figure out what regulations are still necessary and which
2 once just get in the way of infrastructure development.
3 And so part of the URF decision that we haven't talked
4 about is that we were looking at regulatory rules and
5 saying do these really make sense going forward?

6 We also have been looking specifically at
7 barriers to broadband. And, for example, we're looking at
8 our processes for cell siting review, how we look at that.
9 There's very stringent rules under CEQA about what needs
10 to be done. Generally, we send the carriers to get local
11 permits and go through the CEQA process locally. But as
12 you know sometimes that can take a really long time if
13 it's a community that isn't friendly to wireless towers.
14 So we've been trying to take actions on the docket right
15 now, on CEQA in telecom, where we're looking at that
16 process and seeing how we can improve that.

17 VICE CHAIRMAN ASHBURN: Rather than go through a
18 list of issues, I think you've already accepted the idea
19 that I suggested that the PUC is not all that efficient,
20 and sometimes not responsive, and maybe overly
21 bureaucratic.

22 So my question is in terms of your personal
23 leadership with the other Commissioners to do something
24 about the administration of the agency. Are you willing
25 to take that on?

1 MS. CHONG: I think I have taken it on, Senator.
2 I'm trying to get things done particularly in telecom. I
3 believe that we're really behind in telecommunications --

4 VICE CHAIRMAN ASHBURN: Do the commissioners ever
5 meet to discuss administrative issues?

6 MS. CHONG: No -- well, I take it back. In
7 closed session we do on occasion discuss administrative
8 matters.

9 VICE CHAIRMAN ASHBURN: And those are probably
10 personnel matters.

11 MS. CHONG: No. Some of them include broader
12 matters involving how the place runs. President Peevey
13 has that responsibility as the president.

14 VICE CHAIRMAN ASHBURN: Well, I'm suggesting that
15 as a commissioner you have equal responsibility and every
16 commissioner. And the public deserves a lot better. And
17 so what I'm looking for in making my vote here today is
18 somebody who's willing to take it on and push it, because
19 it's unacceptable to have a bureaucratic nonresponsive
20 government agency that isn't serving the consumers well,
21 and it's certainly not bringing to the consumers or the
22 general public the prices, the services that we ought to
23 expect. And so, you know, I have to hold you responsible
24 for that for getting that job done.

25 MS. CHONG: Your point is well taken, Senator.

1 VICE CHAIRMAN ASHBURN: I appreciate it.

2 CHAIRMAN PERATA: And be careful if you don't
3 want the sunshine police on your tail, that you should
4 have these discussions that are not about personnel out in
5 the open. You know, I mean these fascinating to thousands
6 of people.

7 (Laughter.)

8 MS. CHONG: These are like new computers and new
9 cubicles. Nothing of issues.

10 CHAIRMAN PERATA: Well, you know, there are
11 people that care about these new computer issues.

12 (Laughter.)

13 MS. CHONG: I understand there are.

14 CHAIRMAN PERATA: I represent a lot of them.

15 (Laughter.)

16 CHAIRPERSON PERATA: Senator Padilla.

17 COMMITTEE MEMBER PADILLA: Ms. Chong, you had
18 begun to discuss last week prior to today sort of a
19 follow-up to an implementation on the bill that was passed
20 last year allowing companies like Verizon, AT&T to enter
21 the video arena. Can you comment and expand on our
22 discussion last week about the implementation and
23 specifically on the protections for some of the
24 communities that you have been emphasizing through your
25 comments today, low-income communities, minority

1 communities, et cetera.

2 MS. CHONG: Yes. Senator, we were discussing the
3 video franchise bill, AB 2987. As you know, that was
4 passed in August. And it is being implemented by the PUC.
5 There are 2 areas where I have special interest and one is
6 the anti-discrimination as to low-income area. I felt
7 this was very important to see that in the bill, because
8 it means that when AT&T and Verizon build in California,
9 they will have an obligation by law to build to all
10 communities and not just to wealthier communities. I felt
11 this was a good idea.

12 Two, there are anti-discrimination and build-out
13 rules that are built into the law. We are in the process
14 of writing up those rules right now. We are going to put
15 out rules with specific enforcement sections and make sure
16 that the carriers are aware that we intend to rigorously
17 enforce the anti-discrimination and build-out
18 requirements.

19 And if they were to fail to comply with them, we
20 are going to make clear in our final decision that we have
21 sanctions available to us as the PUC. Number 1, we can
22 order up to 1 percent of the their gross revenues from
23 video as a fine. We also have revocation and suspension
24 of the license as a sanction. And we are going to make
25 clear that we intend to use it. We will also be looking

1 at this beginning the day they file as an applicant in
2 terms of that's when the clock will start to run and we're
3 going to keep an eye on it.

4 So I wanted to assure you that for those
5 communities which I care about too, in terms of getting
6 broadband to them, the PUC will be vigilant.

7 COMMITTEE MEMBER PADILLA: Now, the perspective I
8 have experience with concerns really the cable franchises
9 at the local government level. We're in a new area here
10 where people are franchising at the State level. But the
11 franchise agreements I'm familiar with include when it
12 comes to the point of all communities, as you referenced,
13 will there be a time-specific or schedule-specific
14 build-out plan, and also a geographic sequencing? From
15 your knowledge or your understanding of AB 2987, is it
16 that specific where we're building out to all communities,
17 but based on a certain schedule?

18 MS. CHONG: They have varying time obligations
19 depending on what type of technology they're using. For
20 example, if they're using fiber to the premises, there's a
21 certain time period within X years you must cover X
22 percent.

23 COMMITTEE MEMBER PADILLA: I thought we were
24 dealing with 100 percent if we're dealing with all
25 communities?

1 MS. CHONG: That's correct, but there's a
2 build-out schedule that allows them to ramp up over time.
3 I believe that after 5 years it needs to be 50 percent.
4 And so that is what the PUC will be checking by asking
5 them how much they have covered, we are going to ask them
6 to report to us on a regular basis and use that data to
7 synch up with census maps so that we can figure out
8 whether they have met their obligation.

9 COMMITTEE MEMBER PADILLA: So 50 percent then.
10 So that means 50 percent can still be not reached in that
11 5 year time period. Is there a time frame in which we're
12 reaching, if not, 100 percent at least a lot closer to 100
13 percent?

14 MS. CHONG: There is not in the bill.

15 COMMITTEE MEMBER PADILLA: In the bill, but the
16 PUC is going to be implementing it from here forward?

17 MS. CHONG: That's correct.

18 COMMITTEE MEMBER PADILLA: Any sense, at this
19 point, that your personal position or opinion or that of
20 the Commission as to how aggressive to be beyond a 5-year
21 time period?

22 MS. CHONG: You know, the -- we haven't looked at
23 that, because -- well, I don't know to be honest.
24 Obviously, my goal is to have 100 percent covered in every
25 area.

1 COMMITTEE MEMBER PADILLA: That would be my goal
2 and my dream too.

3 If we're genuine about truly reaching all
4 communities and all consumers in the state.

5 MS. CHONG: That's right.

6 COMMITTEE MEMBER PADILLA: So that's something
7 that I'm going to want to keep a close eye on, not just
8 through these proceeding but well into the future.

9 Question in a different subject area, in terms of
10 you provided to the Committee for review, you talked both
11 at the energy section, the water section and the
12 telecommunications section a lot about disaster
13 preparedness and emergency preparedness. Can you expand
14 on that, we haven't talked about that today?

15 MS. CHONG: Yes. While I was with the FCC I
16 developed an interest in emergency preparedness. At that
17 time, there was new technology that would allow wireless
18 phone companies to pinpoint where a user was, either
19 through triangulation methods or GPS. And so the issue
20 before the Commission was whether we should require the
21 industry to transition to this technology to enhance
22 public safety. And so I became interested in these issues
23 and we did order them to do it. And it saves lives every
24 day.

25 When I came to the PUC, I continued this

1 interest, because after Hurricane Katrina, after the '89
2 earthquake in San Francisco that I was in, I became
3 concerned about whether there were emergency plans for
4 wireless companies, phone companies and electric
5 companies.

6 So one of my priorities as a commissioner is to
7 require the utilities to report to us what emergency
8 preparedness they have done and also to make sure they
9 have coordinated with the Office of Emergency Services and
10 the Governor's Office in case of an emergency.

11 So to this end, we have a process going in the
12 telecom division about the telecom companies. And I have
13 met with Mr. Renteria over at OES and we are discussing
14 having a workshop later this year to gather the carriers
15 together and have them present their emergency plans to
16 make sure that they really are organized and that they
17 have coordinated with OES in advance in case of a
18 disastrous emergency.

19 COMMITTEE MEMBER PADILLA: And again, this is an
20 area I look forward to working with the Commission on,
21 disaster preparedness. Well, first of all, the intent of
22 our infrastructure goes beyond just transportation
23 systems, et cetera, but into the areas of water, power,
24 telecommunications, communication systems in general, but
25 certainly in a post-9/11 environment and in a state that's

1 not unfamiliar with earthquakes, floods and fires, you
2 name it, enhanced emergency preparedness and disaster
3 preparedness and response plans, I think, are critical for
4 the health and safety of our state.

5 MS. CHONG: I completely agree with you, Senator.

6 COMMITTEE MEMBER PADILLA: Thank you, Mr.
7 Chairman.

8 CHAIRMAN PERATA: Senator Cedillo.

9 COMMITTEE MEMBER CEDILLO: So tell me about your
10 reasons for voting for the new Bill of Rights as opposed
11 to the one that was previously in existence. And then
12 there seems to be -- I'm just trying to understand why,
13 for example, my understanding in the previous Bill of
14 Rights there was kind of a directive or a right to have
15 contracts in the same language that you're marketing to,
16 so that gets eliminated. Yet, I appreciate the efforts
17 that you and President Peevey are making to ensure that
18 becomes a reality. So reconcile that for me and talk to
19 me why you chose your approach as opposed to the explicit
20 rights that were articulated in the previous Bill of
21 Rights.

22 MS. CHONG: The Bill of Rights proceeding began
23 about 6 years ago. And my understanding is that the Bill
24 of Rights that the gentleman from TURN was discussing was
25 voted out, but they never were, in fact, implemented.

1 This all occurred before I joined the Commission. I
2 understand that in 2005 the rules were stayed. And in its
3 place were put a new approach which was authored by
4 President Peevey.

5 I joined at the tail-end of this 6-year odyssey.
6 I believe we voted it out in March of '06 and I joined the
7 Commission in the middle of January. So when I came in, I
8 was reviewing President Peevey's draft. I probably met
9 with 20 parties to hear all the views. And what the
10 Commission decided to do in the Bill of Rights case is we
11 had an understanding that wireless carriers in particular
12 have mostly national footprints. And so there was some
13 concern about whether some of the rules, not all of them,
14 but some of the rules might impose state-specific
15 requirements on the carrier. And if you think it through,
16 if they have a national footprint, if every state had
17 different requirements that it would, in general, increase
18 cost to consumers unnecessarily. On the other hand, we
19 were also weighing whether these rules really got to the
20 heart of the problem.

21 And so, for example, on the 30-day return rule,
22 we found that, in fact, some carriers had 3-day return
23 rules, 7-day return rules, 14-day return rules, 30-day
24 return rules. And so in our view, we felt that the market
25 was taking care of the problem. We felt that if you

1 wanted a low-cost plan, you could go with a small carrier
2 who maybe had a shorter return period, but was very
3 inexpensive. If you wanted to fly first class, you would
4 go to a carrier that guaranteed you the full 30 days. So
5 we felt that the market was dealing with this issue
6 appropriately and that it didn't necessarily require a
7 regulatory rule to resolve it.

8 Coverage area is a big area of complaints by
9 consumers. And so we looked at that issue, should we
10 require them to provide mass to consumers? In fact, at
11 that time, we found that they were doing it voluntarily in
12 their sales offices. A lot had changed in the 6 years
13 since the proceeding had started and that competition had
14 driven them to do it, because people wanted to know and
15 make sure that it worked where it was supposed to work.

16 So I want to emphasize that we were looking at
17 the rules in 2006 not the rules in the year 2000, because
18 the market has changed so swiftly that we wanted to make
19 sure that they made sense now. And we did not feel that
20 that type of heavy regulation was appropriate as to
21 specific rules, but we did go through rule by rule and
22 discuss them all to see whether we thought that they were
23 necessary or might inadvertently hinder a marketplace and
24 add costs.

25 COMMITTEE MEMBER CEDILLO: How do you test that?

1 What was your measure for testing that? You have a
2 consumer, you want to give them 30 days, right, and that's
3 kind of -- there's like some principle or theory there.
4 Obviously, they've got to have a product available. If
5 you say you can get a product cheaper, but you only have 3
6 days to figure it out. If nothing, you're locked into a
7 cheaper product, so then your choice objectively is
8 restricted. And then you have this though, will we let
9 the marketplace --

10 CHAIRMAN PERATA: Gill, could you speak up.
11 People are having a hard time hearing you in the building.

12 COMMITTEE MEMBER CEDILLO: I'm sorry. I'm
13 just -- what measures did you have for that? I mean,
14 particularly since as the market was getting more flooded,
15 the competition gets more active, prices go down, I don't
16 see how some of these protections that were previously
17 articulated become feathers. I think they become more
18 likely to be options. And actually it would seem to
19 enhance competition given the greater protection.

20 MS. CHONG: We felt that the customer should have
21 the choice.

22 COMMITTEE MEMBER CEDILLO: Right. I get that.
23 But my question is what's your measure? I mean, how do
24 you figure out it's a problem for the industry?

25 MS. CHONG: We look at complaint rates. Now,

1 unfortunately, the current PUC doesn't track complaint
2 rates. They don't have a database that defines what type
3 of complaint was filed. The FCC does, however. And so we
4 have a pretty good idea of what the major areas of
5 complaints are from FCC data. And some of these areas
6 billing questions, coverage area disputes, are some the
7 biggest areas of complaints. So that is how we're
8 watching it.

9 We have not seen as much dispute over this issue
10 as, for example, early termination fees. I think that's
11 an area of bigger dispute.

12 COMMITTEE MEMBER CEDILLO: And the question that
13 seems to be one of the major central issues is this
14 question of trust or integrity challenges that have been
15 brought forward. How would you have handled this matter
16 differently?

17 MS. CHONG: The URF matter?

18 COMMITTEE MEMBER CEDILLO: The change paragraph,
19 the change -- how would you have handled that differently?
20 And the second question is given once the controversy
21 began to emerge, why did you vote for the subsequent
22 proposal as opposed to returning to the status quo, once
23 it was discovered that it was in conflict the previous
24 order? I mean, the order existed. Why would you then
25 vote not to return to the previous order? Without all the

1 data that appears that's where you are and you were all
2 interested in seeing subsequent. It seems we got to the
3 leaf before we got the basis for it.

4 MS. CHONG: So the answer to the first question
5 is in terms of the paragraph?

6 COMMITTEE MEMBER CEDILLO: Um-hmm.

7 MS. CHONG: There wasn't anything differently
8 that I would have done, because I was following the normal
9 procedure. You put out edits. You redline them. You let
10 everybody know. I don't think there was anything else I
11 could do. We were under a tremendous time pressure. But,
12 you know, if your colleague fails to read it, it's kind of
13 out of my control to be honest.

14 Secondly, on the issue of when the problem came
15 up, which we have done, well, I think we did the right
16 thing. We realized there was an inadvertent problem. We
17 have -- AT&T voluntarily came in and put back some but not
18 all of the language. We have suspended that paragraph, so
19 AT&T can't file anything further or any other party in the
20 case. And we have put all of those issues into a
21 proceeding where everybody can air their views on it and
22 fully vet the issue publicly in phase 2, and that's
23 already in the process.

24 So in my view, I believe that we did fix the
25 problem. I regret that it had -- this paragraph had an

1 inadvertent circumstance. I wish I had known, but I
2 didn't. I was new. But now that I know about it, I
3 intend to fully vet it with an open mind and thoroughly in
4 phase 2 of the proceeding. And we're doing it right now.

5 So I will tell you that I will be very careful in
6 the future to make sure that we ask more questions about
7 regulations that companies want to get rid of. You know,
8 we didn't know, at least I didn't. And we will encourage
9 parties to tell us if there are past enforcement issues
10 that we should be aware of. It's kind of -- you know, we
11 didn't hear that from the parties in this particular case,
12 because I think it was considered a minor issue.

13 COMMITTEE MEMBER CEDILLO: I'm done.

14 COMMITTEE MEMBER PADILLA: Can I ask a follow-up,
15 because I interpreted Mr. Cedillo's question as a 2-part
16 and I heard you address one part. I didn't hear the
17 response to the first part, which was granted you didn't
18 commit -- you weren't on the Commission when the
19 Commission first voted to repeal the previous Bill of
20 Rights, but you were there for the adoption of the new
21 Bill of Rights, if you will, which provided an option for
22 you to go along with the new Bill of Rights. And if not
23 advocating the previous Bill of Rights, at least speaking
24 to that effect.

25 So I'm interested in the response of your

1 thoughts on the new Bill of Rights versus old Bill of
2 Rights, and why you may think that the previous Bill of
3 Rights was lacking in some way or inappropriate in some
4 way.

5 MS. CHONG: The prior Bill of Rights took what I
6 think was a very regulatory approach. They saw a problem,
7 they proposed a broad rule. And the new approach looks at
8 every problem very specifically and tries to understand is
9 this something where a rule is required?

10 In many instances, we felt that we already have
11 laws and code sections that resolve the rule -- resolve
12 the problem, pardon me. And we felt that there wasn't
13 adequate enforcement by the PUC itself. So there wasn't a
14 feeling that we had to have a whole bunch of new rules.
15 We had to just appropriately enforce our current rulings.
16 You will see attached to the Bill of Rights in Appendix D
17 where we list all the existing rules that we have that I
18 think may not have been enforced properly in prior
19 regimes.

20 Also, into the mix there are probably 6 to 8
21 wireless carriers per area. And we felt that this showed
22 very vigorous competition. I think you just look around
23 you see most people have a cell phone. And we felt that
24 consumers would vote with their feet ultimately and
25 carriers with bad service will lose customers and not be

1 successful.

2 Now, having said that, any time you have a
3 fraudulent misrepresentation, inappropriate charge, I've
4 already got laws on the books for that, cramming rules,
5 slamming rules, misrepresentation, fraud. That's already
6 on the books. We can do that now.

7 COMMITTEE MEMBER PADILLA: In isolation your
8 response makes sense. But if I put it in historical
9 context, if the rules, marketplace et cetera were
10 practicing as you're arguing, there wouldn't have been any
11 previous Bill of Rights or a need for a previous Bill of
12 Rights, because these problems wouldn't have been
13 happening. But the fact of the matter is that they are.
14 They are. And the initial Bill of Rights were the result
15 of some process as well, public hearings, testimony,
16 experience from the PUC at the staff level, issues that
17 were coming to the Commission level as well.

18 So you pretty quickly upon joining the Commission
19 went along with this new Bill of Rights. And again not
20 sure how much time you made for studying the history of
21 the issue before casting the vote. I also recall one of
22 the gentlemen that was testifying in opposition to your
23 confirmation here that while there was a previous Bill of
24 Rights, the Commission still failed to do a good enough
25 follow-up job establishing policies, protocols, procedures

1 for the actual implementation and guaranteeing those
2 rights to consumers.

3 To have a Bill of Rights is great, but if there's
4 no follow-up statutes otherwise to be able to enforce
5 them, that's a concern too. So how would this new Bill of
6 Rights which some argue are weakened from the previous
7 version, how are we going to feel confident that even
8 those will be followed up on by the Commission for true
9 guarantees by the consumer?

10 MS. CHONG: We are putting our money where our
11 mouth is with the enforcement unit. We are putting our
12 money where our mouth is with 15 more complaint bodies to
13 get these issues of abuse to the D.A.'s office and the
14 Attorney General's office who we're now in partnership
15 with on these issues. We are putting our money where our
16 mouth is by having new cramming reporting requirements,
17 which we've also put in place this year, which I hadn't
18 mentioned, and more rigorously enforcing the cramming
19 rules.

20 So I do not agree with the view put forward by
21 some of the consumer groups that we've sat on our hands
22 and done nothing. I would strongly disagree with that.

23 COMMITTEE MEMBER PADILLA: But more work needs to
24 be done?

25 MS. CHONG: Oh, yes, always.

1 CHAIRMAN PERATA: Anything further?

2 Well, I appreciate everything and everyone who's
3 participated this afternoon. I had a couple of just -- it
4 wasn't brought up here, but it was brought up to a number
5 of senators in your discussions, and that is the
6 appointment of Mr. Sullivan as the administrative law
7 judge. Would you just address that. There are people
8 that -- everybody seems to agree that there is nothing
9 illegal about this or maybe even unusual, but it looks
10 like it might give the appearance of the fox in the hen
11 house.

12 MS. CHONG: I'd be happy to address that. Dr.
13 Tim Sullivan is an administrative law judge with the PUC.
14 And he has been loaned to me by the Administrative Law
15 Judge Division as a telecom and water advisor. When we
16 were kind of suddenly thrust into the role of the
17 regulatory agency and the video franchise bill, AB 2987,
18 the PUC realized that we needed to implement the bill
19 properly and thoroughly within a fairly rigorous time
20 period, 6 months.

21 So I am the assigned Commissioner on the case.
22 And when we went to the administrative law judge for
23 assignment of a judge, because of the urgency of the case
24 and the fact that it's a petty technical case having to do
25 with telecommunications, she made the decision herself to

1 assign Dr. Sullivan to be the administrative law judge.

2 Now, this is what we call at the PUC a
3 quasi-legislative proceeding. And what that means is the
4 role of the administrative law judge is to assist the
5 assigned commissioner in making that proposed decision.
6 And what I mean by assist is that the assigned
7 commissioner calls the shots in terms of the policy
8 decisions and the ALJ assists the commissioner in writing
9 up the decision.

10 In other types of cases, complaints, adjudicative
11 cases, the ALJ has a different role. There they hear
12 evidence, they build the record and the ALJ has a duty, an
13 independent duty to write a decision which is presented to
14 the Commission. The assigned commissioner may write an
15 alternate decision to the judge, but the judge has the
16 right to have its decision -- his or her decision put up
17 to the Commission.

18 The video franchise matter is a quasi-legislative
19 matter. So in that matter, the judge is acting as an
20 assistant to the assigned commissioner. So in this
21 instance, we do not see any type of appearance issue,
22 because I am the assigned commissioner who will be calling
23 the policy shots in terms of putting the proposed decision
24 before other commissioners.

25 Now, of course, once I do that, any other

1 commissioner has a right to draft an alternate decision
2 for consideration. So I wanted to explain that
3 procedurally. So it is a little bit unusual, yes.
4 However, there was a time urgency that we faced and also a
5 complexity of the bill in terms of communications where
6 Dr. Sullivan's expertise was welcomed and needed.

7 CHAIRMAN PERATA: Okay. One other comment and I
8 think it was sort of nibbled at here not only with regard
9 to Bakersfield, but that in this whole new world people
10 who have a real opportunity of getting hosed are not
11 simply people who are in lower income areas, but people
12 who live in rural communities. And I, for one, do believe
13 in the regulatory process. I've seen just 1 too many CEO
14 salaries that were stratospheric, even hire than baseball
15 players and football coaches if you can imagine. And I do
16 think that we need people to keep a sharp eye out and
17 balance interests. An even call, I would always go with
18 the people on the receiving end as opposed to the giving
19 end.

20 I don't think that there's any commission in the
21 State, with the exception of maybe the Parole Board, that
22 has more importance in the lives of individuals. And
23 certainly in the consumer culture and an acquisition
24 culture, this is even more important. We haven't had time
25 to talk about water, which is probably something that I'll

1 learn about before I ask about it. I know that is one of
2 the areas that you have. And the way in which all the
3 jurisdictions are broken out, it seems like that might be
4 a step-child.

5 But the importance of this position and I think
6 the candid exchange here today really militates for
7 another week of private deliberation and consideration by
8 this body. We don't make too many decisions that I think
9 are as important as this one. I also recognize that, you
10 know, this is a 2-year term, and so before you know it,
11 you'd be sitting back here again.

12 But with your forbearance, I would like to
13 have -- we will take a week. It will be up for a vote
14 only. You will still be eligible for confirmation in time
15 before you expire, and so there won't be any interruption
16 there. I would also like to commend -- I mean your
17 husband has been pretty well mannered, but your children
18 are unbelievably well mannered today. And he's fidgeted
19 some, but they've been terrific.

20 (Laughter.)

21 CHAIRMAN PERATA: And so I thank you for being
22 here. Thank you for your candor. I thank everybody who's
23 participated and I think that at the very least I feel
24 very confident that while you may have honest
25 disagreements between and among those people who are

1 engaged at the PUC, that you're certainly someone that's
2 willing to engage and that always is not the case.

3 So you may or may not want to come back next week
4 to visit us. You won't have to, but I promise you that
5 we'll be done quickly. And I wouldn't read anymore into
6 this than this is Don's way of trying to make sure
7 everybody gets an opportunity to kick the tires.

8 Thank you very much.

9 MS. CHONG: Thank you.

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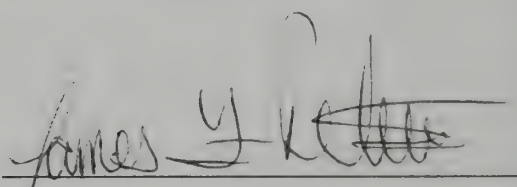
1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing Senate Rules Committee hearing for the State of
7 California was reported in shorthand by me, James F.
8 Peters, a Certified Shorthand Reporter of the State of
9 California, and thereafter transcribed into typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 12th day of January, 2007.

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21 A handwritten signature in cursive script, appearing to read "James F. Peters", is written over a horizontal line.

22 JAMES F. PETERS, CSR, RPR
23 Certified Shorthand Reporter
24 License No. 10063
25

APPENDIX

Confirmation Questionnaire
Answers of Rachelle Chong, CPUC Commissioner

General Issues/CPUC Process

1. *What do you hope to accomplish during your tenure as a CPUC member? What are your specific areas of interest?*

Communications Goals:

Given my background as a former Commissioner of the Federal Communications Commission (FCC) from 1994-1997 and my experience as a career communications regulatory lawyer, my primary goals lie in the communications area:

- (1) extend advanced broadband facilities to every community in the State, particularly to rural, remote, low income, and the disabled communities;
- (2) ensure that the PUC's regulations and processes encourage the best communications services at reasonable rates;
- (3) educate consumers in simple language as to the changing telecommunications marketplace, using modern outreach methods such as: (a) consumer-oriented brochures in English and the key non-English languages spoken in California; (b) website outreach via CalPhoneInfo.com; (c) consumer "Bill Forums" to assist consumers with billing questions and complaints one-on-one in hard to access communities (e.g. limited English communities, senior centers and low income communities), and (d) using trained community-based organizations to educate consumers on complaint resolution and other frequently asked questions.
- (4) enforce the PUC's rules and regulations against "bad actors" that defraud consumers or engage in misrepresentation;
- (5) ensure California's communication carriers are prepared for emergencies by assessing their plans to ensure the continuity of service in emergency situations, formulating guidance on such planning, and establishing relationships between carriers and appropriate California government agencies, such as the Office of Emergency Services.

Senate Rules Committee

Since January 12, 2006, I have accomplished the following with my colleagues:

As the assigned commissioner, I led work on the Commission's Broadband over Power Lines (BPL) decision in April 2006. This BPL decision encouraged electric utilities to develop broadband systems over their power lines, in order to encourage a new major broadband provider to Californians.

In August 2006, I prepared a major order in the Uniform Regulatory Frameworks (URF) Phase I proceeding to introduce significant pricing flexibility and other reforms for the four largest telephone companies in light of evidence of increased competition in the phone market. The URF decision froze the basic residential rate until January 1, 2009, pending review of our Universal Service public programs. The URF decision was approved in a 5-0 vote of the Commission in August.

I have initiated two Universal Service rulemaking dockets in May and June 2006 to perform some overdue review our four public policy programs (Lifeline, Teleconnect, the Deaf and Disabled Telecommunications Program, Public Payphone Program) and our California High Cost Fund B program. We are looking at ensuring these five programs are meeting their statutory goals, consistent with the national and state law mandating competition in the telecommunications marketplace. The Administrative Law Judge and I have conducted numerous workshops and public participation hearings on Universal Service issues throughout the State. We have learned much from these hearings, particularly that the participants of the programs are eager for other telecommunications choices other than landline phone services.

I am the Assigned Commissioner overseeing the PUC's rulemaking docket implementing AB2987, the video franchise law, passed by the Legislature last August. A proposed decision containing a "straw man" was issued in the docket. We have received extensive public comments and reply comments. The PUC staff is now working to finalize a proposed final decision by no later than April 2007, consistent with the law.

With Commissioner John Bohn, I have been overseeing the PUC's implementation of the Consumer Protection Initiative. With the support of the Legislature, the PUC has doubled the size of our Consumer Affairs Bureau representatives answering the PUC's complaint hotline, greatly reduced the outstanding complaint backlog, and is the process of updating our internal database that supports our CAB and Enforcement divisions.

This initiative is driving positive changes at the agency to be more consumer focused, and to resolve consumer complaints more efficiently. We also are encouraging consumer education via the informative www.calphoneinfo.com site developed with unprecedented cooperation of the phone carriers, consumer groups and community based organizations, and media outreach. We have also implemented new consumer Bill Forums targeting hard-to-reach communities. We conducted the first consumer Bill Forum in Fresno in October, and have plans for up to eight more next year in various locations throughout the state.

On enforcement topics, we have held workshops to develop our new cramming reporting requirements; formed our Telecommunications Fraud Unit; conducted discussions with the Attorney General and District Attorney's Offices on better ways to work together to prevent telecommunications fraud; and instituted regular forums to discuss with phone carriers problem areas, such as issues relating to lost and stolen wireless phones, customer billing issues, billing format issues, slamming and cramming.

Other activities furthering PUC communication goals:

I have been assisting the California Emerging Technology Fund (CETF) Board as to broadband deployment to rural, low income and disability communities.

I have been named to the Governor's Broadband Task Force to identify opportunities for increased broadband adoption, to remove barriers to access, and to enable the creation of cutting edge advanced telecommunication technologies.

I serve on the National Association of Regulatory Utilities Commissions (NARUC) Committee on Telecommunications as California's representative.

Energy Goals

While I am new to energy issues, I have been learning quickly on the job and have established these goals:

- (1) I will aggressively pursue the State's Energy Action Plan goals in order to restore investor confidence in our energy market, and ensure reliability and reasonable rates to ratepayers. I plan to hold utilities and energy service providers accountable for achieving goals. I also

intend to ensure that the PUC coordinate across related proceedings to ensure policy consistency.

- (2) In achieving the State's Energy Action Plan goals, I would first explore market-based and cost-based approaches, because I believe that this ultimately lowers the costs of energy to California consumers.
- (3) I will work to promote regulations that encourage investment in California's energy infrastructure. I favor a stable regulatory framework that encourages long-term investment in renewables, transmission and generation. I wish to promote transparent, open and fair energy procurement processes. I believe in streamlining regulatory approval processes.
- (4) I believe the PUC and the energy utilities should empower consumers to reduce their energy bills. I encourage electric utilities to adopt advanced technologies to provide consumers more information about their energy usage patterns on a real time basis, in order to allow consumers to reduce their bills. I advocate the PUC developing innovative tariffs so that consumers may benefit from smart energy management.
- (5) Like President Peevey, I believe in collaborating with the California Energy Commission (CEC) and the California ISO (Cal ISO) in order to put in place policies consistent with the Energy Action Plan. I believe in continued cooperation with the CEC to develop the state's energy policy. Recently, I worked with CEC Commissioner Art Rosenfeld and the CEC staff on a November 2006 demand response decision by the PUC. I believe we need to consistently identify opportunities to connect the CEC's research and policy expertise with the CPUC's regulatory priorities. In light of the sobering July heat storm, I believe in close collaboration with the Cal ISO to address the state's reliability needs. I have met the Cal ISO senior officers and toured the Cal ISO in July to become familiar with its goals and important operations.
- (6) My first vote at the PUC was for the California Solar Initiative. I am committed to efficient and cost effective renewable sources of energy for our State. Similarly, I am committed to policies that will reduce green house gas emissions in California.

- (7) I am concerned about disaster preparedness by electric and gas utilities, and hope to assess their current emergency plans in 2007.
- (8) In the natural gas sector, I believe in a diverse set of gas supply options in order to ensure reasonably priced natural gas for all users. With the high price of natural gas, I have seen impacts on the price for electricity and for residential gas users. As a result, I believe the Commission should continue to move towards a more competitive natural gas market with cost based rates. This year, I have supported a two key decisions which have moved our regulatory framework forward in a significant way: the Long Term Natural Gas decision regarding quality standards and long term adequacy issues, and Firm Access Rights decision.

Water Goals:

In the water sector, I support the Commission's policies as set forth in the December 2005 Water Action Plan.

- (1) I believe we need to ensure clean water at reasonable rates. As water is such a uniquely local issue, I have found that this requires a per system approach which presents a challenge to the Commission's scarce resources. I do have concerns about the speed with which our water rate cases proceed, and support streamlining reforms.
- (2) I believe we must encourage investment to meet growing water infrastructure needs. I am concerned that the growth forecast for the Central Valley and parts of Southern California will adversely impact the state's water infrastructure.
- (3) I support efforts to encourage water conservation where necessary. I believe that education is a critical component to successful water conservation measures. To that end, I encourage water companies, local governments, schools, community based organizations and the PUC to engage in meaningful water conservation campaigns.
- (4) I have supported PUC decisions introducing new low income water programs.

General Goals:

In terms of more general regulatory goals, as a past practitioner before the PUC, I am working to encourage speedier decision making at the PUC, to ensure legally defensible decisions, and to review our regulations to make sure they are up-to-date with current market developments.

2. **In recent years, the commission has enacted major new policies in areas like solar energy resources, greenhouse gas emissions reductions, and telecommunication consumer protections. In some cases, the CPUC's actions have significant state budgetary impacts or impinge upon the statutory mission of other agencies (i.e. climate change).**

Should the commission adopt decisions when they affect the state budget and/or other agencies prior to fiscal or policy action by the Legislature? How do you, as a commissioner, consider these factors when voting on decisions?

I believe in making decisions that are as narrowly tailored to accomplish the goal we are seeking to address. When CPUC decisions might affect the state budget or the work of other agencies, I have sought to ensure that the CPUC has fully vetted the issues with the Legislature and the other agencies.

When the budget might be affected, I have sought to ensure the commitments made by the CPUC will not go into effect until budgetary resources are approved by the Legislature and the Governor. I believe that deference to the Legislature is wise to the success of any such endeavor.

An example of this is the Consumer Protection Initiative where consumer education and CPUC enforcement rules were put in place to protect consumers. As the telecommunications market matures from monopoly to multiple players using multiple technology platforms, the CPUC must adapt from a monopoly regulatory model to an enforcement agent role. Part of that evolution was working with the Legislature to add customer service staff and build a modern customer service tool for that staff. I am pleased that the Legislature agreed with our assessment of the market and our proposed solution. It approved the budgetary resources necessary to accomplish our important customer protection role.

I believe that this cooperative approach is critical to ensuring success of any program contemplated by the CPUC. Legislative oversight and approval is a necessary component to any such endeavor.

When other agencies are involved, close coordination should occur with the other agencies during the deliberative process to ensure the CPUC fully understands their issues and takes them into account when considering the matter.

3. In the mid-1990's, the commission's administrative procedures came under legislative review because of concerns that commission proceedings were not sufficiently open or accessible to the public. That scrutiny resulted in bipartisan support for AB 2850 (Chapter 1110/1994) and SB 960 (Chapter 856/1995) which reformed commission procedures.

More recently, parties have complained that information from commission proceedings is shielded from the public. For example, in the area of utility energy procurement, so-called "procurement review groups" have been established, and parties often are required to sign "confidentiality agreements" which bar them from discussing publicly, and with the Legislature, the details of power purchases.

What is your response to this criticism? Should the CPUC provide more open and record-based decisions? If so, please specify those actions you support.

I strongly support open decision making and a process that is accessible to all. My general approach to assessing confidentiality claims is that there is no presumption of confidentiality. Due to strong public policy in favor of openness, I put the burden of proof on the claimant.

I recognize, however, the tensions that led to recent legislative action:

- o Public Utilities Code §454.5, enacted in the wake of the energy crisis, requires that the Commission protect "market sensitive information" from market participants.
- o Attempts to deal with access issues in ongoing procurement proceedings were unsatisfactory. There was an ongoing tension between: (1) those who wished to prevent market sensitive information from being used by competitors of the Investor Owned Utilities (IOUs) and thus damaging ratepayers; and (2) those who felt that all such information should be available to all participants in the procurement proceeding, including market participants.

- o Even the ALJs' efforts in the procurement docket to adopt comprehensive protective orders did not defuse this tension.

In response to these problems, SB1488 (Bowen) required that the PUC review our current practices regarding confidential information to ensure meaningful public participation in our proceedings and open decision making. Half a year before I joined the PUC, the PUC opened Rulemaking R.05-06-040 to do this. We decided first to focus on energy procurement proceedings.

Parties developed, and the Commission approved in June 2006, a matrix approach to assessing the confidentiality of the vast majority of utility procurement information (D.06-06-066). A second decision in this rulemaking was approved by the Commission on December 14, 2006. This decision defines who is a "market participant," thereby broadening access and reducing the amount of controversy over procurement-related confidentiality claims. I understand that Assigned Commissioner Grueneich contemplates a third decision will issue in the implementing rulemaking that addresses broader (non-procurement specific) confidentiality issues. I welcome this long overdue look at the Commission's generic confidentiality rules like General Order 66-C.

4. **Article 5 (commencing with Section 1801) of the Public Utilities Code establishes the intervenor compensation program at the commission. The program is intended to ensure that the commission hears from a broad cross-section of public interests and that it provide for effective and efficient public participation in the utility regulation process.**

What is your view of the intervenor compensation program? Is it effective in its current form? Do you support any changes to the program, such as increasing or decreasing intervenor compensation rates?

I am a supporter of intervenor compensation programs as these parties often bring unique issues, perspectives, or depth of analysis to the Commission's proceedings. The Commission itself recognized the contribution that intervenors could make to its decision making process when it enacted compensation rules in the early 1980s (the "OII 100 rules"). The Legislature then codified intervenor compensation in 1984, and amended the program in 1992 (see Pub. Util. Code §1801 et seq.). It is now a well-established program at the Commission.

Under PU Code §1801, the Commission awards compensation for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs to public utility customers of participation in a proceeding of the Commission. To be eligible, the customer must demonstrate significant financial hardship. To receive a fee award, the customer must make a substantial contribution to the Commission's decision.

It is a fact that the intervenor compensation program has grown significantly over the years, and awards are becoming large, including million dollar awards for a large proceedings. The program has had annual total awards totaling over \$3 million in 2003, over \$3 million in 2004, over \$5 million in 2005, and over \$8 million in 2006. Since 2001, the Commission has awarded \$26,494,000 in intervenor compensation. Many advocates have benefited, however, over \$20 million of that total amount was awarded to the following intervenors: TURN, Greenlining, Latino Issues Forum, UCAN and Aglet/Weil.

At the same time, the nature of the Commission's decision making process has changed from traditional rate proceedings to a more policy driven, decision-making process in recent years. Further, our internal Division of Ratepayer Advocates (DRA) has broad responsibility to represent ratepayer interests. I think we should ensure that intervenor compensation is not awarded to groups who duplicate advocacy efforts undertaken by DRA. As in any PUC program, we should always be mindful to weigh the value of a program against its annual costs to ratepayers.

Given the growth in the program awards and the changing nature of the decision making process since 1992 when the current program was enacted, I support a regular review of the program to ensure it still meets the objectives of the statute in our current regulatory framework.

Regarding intervenor compensation rates, the Commission has begun an annual review of the hourly rate levels used by attorneys and experts in calculating compensation awards. Such review is to make sure that the levels correspond to the market rates, as required by PU Code 1806.

Electricity

5. As the state's 2000-2001 Energy Crisis illustrated, California is vulnerable to electricity shortages and the ills that accompany them. Californians still pay, on average, among the highest rates in the nation.

Do you support actions to lower investor-owned utility rates? If so, what actions? What should the commission be doing to assure an adequate and affordable supply of electricity, both for this coming summer and for the longer term? What steps do you support as a commissioner to improve energy efficiency, diversify electricity supplies, improve transmission infrastructure, and strengthen system reliability?

One of my primary goals is to ensure reliability of electricity at reasonable rates for California consumers. California's Energy Action Plan provides the framework for doing so. I support the Energy Action Plan "loading order," which emphasizes energy efficiency and demand response as preferred resources. In particular, I believe that we should reduce energy usage during peak periods to avoid the most costly electricity. As a result, I support expanding the Commission's energy efficiency and demand response programs. I was the Assigned Commissioner on a decision the Commission approved on November 30, 2006, which approved enhancements to the utilities' demand response programs in anticipation of the summers of 2007 and 2008. Demand response programs contributed to reduce load significantly during peak days during the July 2006 heat storm.

I further support the Commission's efforts for open, competitive, and transparent energy procurement. This should ensure energy is being obtained at the lowest possible cost, which results in lower consumer bills.

I favor giving consumers more information and control over their energy usage through new technologies, such as automated gas and electric metering systems which allow utilities to collect energy usage data much more frequently. I look forward to the day when consumers can access this detailed usage data easily, so the consumer can take advantage of new rate options to better manage his energy consumption and control his energy bills. This is the future and we should embrace it to obtain benefits for consumers and enhance operational efficiency for the utilities.

Further, the PUC should carefully scrutinize utility expenditures in general rate cases. In my review of one electric rate case to date, I was concerned to see that utility infrastructure is aging, which is driving up costs. Utility plans to maintain and expand their infrastructure, however, need to be rigorously examined by the Commission to ensure that the costs are reasonable and the needs legitimate.

I support continued work on the Commission's Resource Adequacy framework. The Commission has approved decisions on resource adequacy for the system as a whole and for specific resource constrained areas. The

utilities and energy service providers are required to procure the energy their customers need well in advance. I also support upgrading the transmission system so that the electricity from the lowest cost generators can reach the population centers. Finally, I support a diverse portfolio of natural gas supplies, including LNG, to assure adequacy of supply to the state, and to have ample access to the lowest cost supplies as market conditions change. If these actions are taken, I believe we will have the lowest reasonable rates for our consumers.

6. In 2002 California enacted into law a Renewables Portfolio Standard (RPS) requiring investor-owned and municipal utilities to meet at least 20% of their electricity needs through renewable energy by 2010. Recent news reports suggest that the RPS program is excessively complex and not performing up to its objectives.

Should the CPUC act to ensure that new renewable energy projects will be built in the state soon and that the program does not become excessively complex? What actions do you support to implement the requirements of the Renewables Portfolio Standard (RPS) for energy service providers? How should the CPUC monitor whether the program's complexity is discouraging its effectiveness?

In my view, the purpose of the RPS program is to produce real megawatt-hours of renewable energy. I am aware that some view the program as being too complex and not performing as well as it should. Streamlining regulatory processes is one of my priorities as a Commissioner, and I will certainly review the RPS program with a critical eye in view of these criticisms. All PUC programs must be constantly reassessed and improved, and this one is no exception due to the sheer importance of the program. I will say, however, that as the RPS program has matured the complexity concern has moderated. The biggest challenge facing the RPS program now is transmission.

Some of the state's most attractive renewable resources are located in remote areas. As you know, the PUC is focusing on transmission siting cases that will benefit these renewable energy sources. Some transmission projects that are targeted at renewable resources, however, are unable to receive cost recovery approval from the Federal Energy Regulatory Commission. In June 2006, the Commission approved a decision allowing the utilities to recover through retail rates the cost of transmission facilities necessary to reach the State's RPS goals (PU Code 399.25). We expect that this decision will help resolve this FERC cost recovery issue, and facilitate construction of transmission required to bring clean RPS energy to the market.

On October 5, 2006 the Commission approved a decision that established the ground rules for energy service provider (ESP) participation in the RPS program. I think that the Commission should explore allowing renewable energy credits to count for RPS compliance in the future.

7. **Siting transmission lines is always a controversial proposition. The CPUC is responsible for ensuring that the new lines are needed and that the State's environmental review process is adequately completed.**

Under what circumstances, if any, would you support the siting of transmission lines across state parks and wilderness areas?

Major transmission projects proposed by the utilities must receive a Certificate of Public Convenience and Necessity from the Commission. The CPUC undertakes a thorough review of each project including a determination of the project's need, and a consideration of environmental impacts.

The CPUC performs a CEQA environmental review of each project, which would include a thorough review of any project that is proposed to cross a state park or wilderness area. Obviously, approving a new proposed project in a state park or wilderness area will be controversial. The process includes public hearings so the CPUC can be apprised of all concerns. Public participation is an important part of the CEQA process and Commission's decision making process.

The CEQA review includes a review of alternatives to a proposed project. The alternatives could include alternative routes that go around a state park or wilderness area, or minimizes the impacts on such an area. Alternatives explored by the Commission should, and do, also include "non-wire" alternatives, including energy efficiency and new generation, especially renewable generation, closer to the area where the energy is consumed.

The Commission must also consider the need for the transmission project. For example, we look at whether the project is necessary to bring more renewable energy into the population centers, or will the project connect consumers to lower cost generation, and therefore lower utility bills.

The Commission will consider the Environmental Impact Report and other evidence prior to making a decision on any project, including one that is proposed to cross a state park or wilderness area.

Natural Gas

8. Natural gas has increasingly become the State's fuel of choice for generation of electricity. Natural gas prices have been volatile in recent months, raising concerns about over-dependency and its impacts on utility bills.

Should the CPUC help ensure that the state does not become over-reliant on natural gas? Should it help protect against price volatility for the gas usage projected to take place in the state? What steps do you support to ensure that those supplies the state does use are used as efficiently as possible?

Natural gas is a very attractive fuel relative to other fossil fuels because it produces far less pollution and carbon dioxide than alternatives such as oil and coal. Given this state's commitment to reduction of green house gases, I believe we must be prudent in our natural gas regulation to ensure reliability, and encourage market based mechanisms and competition to drive the lowest prices for California gas consumers.

The most effective way to reduce both the state's reliance on natural gas and exposure to volatile natural gas prices is to reduce the state's overall energy usage through conservation and energy efficiency. To this end, I support conservation programs and energy efficiency programs. Both electric efficiency and natural gas efficiency measures reduce natural gas usage, and the utilities' existing programs include both. We also need to promote alternatives to natural gas generation by implementing and enforcing the RPS statute—meet 20% of the State's electricity demand with renewable resources by 2010; and investigate achieving 33% by 2020.

Many consumers have difficulty adjusting to fluctuating monthly utility bills, so the CPUC should help protect California consumers from volatile wholesale gas prices. I believe we should allow the utilities to hedge against volatile prices. We should also ensure more natural gas storage, so that the utilities and large customers can put gas into storage in the summer when prices tend to be lower, and withdraw gas in the winter. Safely-sited LNG projects can connect California to lower cost gas supplies in other countries, potentially lowering price volatility. Finally, I believe we should investigate solar hot water heating to reduce reliance on natural gas for water heating.

Telecommunications

9. The Commission adopted a decision on the subject of telecommunications consumer protections (D.06-03-013) earlier this year. You voted for this decision despite strong opposition from the Attorney General and consumer groups who asserted that it did not adequately protect consumers.

Supporters of the decision contend the measure provides adequate consumer protection. Critics assert it reverses years of CPUC policy regarding what information and guarantees customers receive regarding costs and terms when they purchase telecommunications equipment and services. The decision also did not provide for contracts in a foreign language if that language was used to sell telecommunication equipment or services

Please explain your vote on this decision. How do you reconcile it with prior CPUC decisions? Do you believe it shifts the burden to consumers to request specific information? Why do you believe it provides adequate information?

When I entered this proceeding, it was just a few months before the decision was issued. With a six year long history, this proceeding was complex as well as highly contentious. The first thing I did was obtain staff briefings, meet with as many of the parties as possible to hear their views first hand, and study the voluminous record.

I supported President Peevey's Consumer Protection Initiative decision because overall, I agreed with the President and Commissioner Bohn that in the big picture, the PUC had adequate consumer protections in place for most of the issues being raised, but our agency's implementation and enforcement efforts needed improvement. I personally dialed the PUC's complaint hotline and was shocked to find it took nearly five minutes for a live person to come on the line. No wonder about half of the consumers hang up before the call is answered. I was also dismayed to learn that the PUC had a backlog of about 25,000 unanswered consumer complaints when I joined the Commission in mid January 2006. When I went down to our Consumer Affairs Bureau (CAB) to investigate first hand, I found CAB was understaffed, not adequately trained, with an outdated database that could not adequately track cases or retain information in a way that the PUC's CAB or enforcement personnel could reliably find it. Further, while many anecdotes of improper consumer actions by carriers were offered, the evidence did not support the allegations that misbehavior by wireless carriers was widespread.

In light of these, I did not believe that heavy handed new regulations, while well meaning, were going to resolve all the problems raised in the proceeding. For example, in the cramming area, we have an anti-cramming regulation on the books, but the issues raised caused us to further clarify and strengthen the rule by ordering a new reporting requirement that unresolved cramming complaints over 30 days must be reported to the PUC. We believed this would provide incentives for carriers to promptly resolve cramming complaints.

We declined to require a PIN authorization number any time a non-communications charge was placed on a phone bill. There are many innovations going on with the phone handset becoming much more than a simple voice communications device. Wireless phones are becoming (1) personal data assistants, (2) a way to access email, text messages and the Internet, (3) a camera and a video recorder, and (4) a music and video player. If Japan is a model, cellphones may soon become payment devices. We did not wish to inadvertently stifle exciting innovation as to such advances, with a well meaning but potentially stifling rule.

With five to eight phone carriers per service area, California clearly has a competitive and vibrant phone market. In my view, consumers are still adapting to this confusing array of new technologies and competition. It was clear to me that part of what consumers needed was consumer education on their new choices, e.g. how to wisely shop for wireless service, how to ensure coverage areas matched a consumer's needs, how to complain to the right agency, what to do about an unauthorized charge or unauthorized carrier change. I was concerned that new regulations might become barriers to entry or otherwise discourage innovation and competition in California's phone marketplace. I felt that the PUC had an important role to play to resolve complaints faster, educate consumers, and ensure compliance with our current pro consumer regulations. I believe the Consumer Protection Initiative struck an important balance in restraining from over regulation while honestly assessing shortfalls, identifying issues, and resolving to fix them on a rigorous time frame.

The Commission has taken major actions to resolve these problems in the last eight months and I am able to report progress to date:

The PUC ordered improvements in its cramming rules, and we are close to approving new reporting rules that will require a phone carrier to report to the PUC monthly on how many outstanding cramming complaints older than 30 days it has not resolved.

We thank the Legislature for funding for the 15 new Consumer Affairs Bureau (CAB) representatives who have been hired since August 2006. Twelve of the CAB reps are bilingual, speaking Cantonese, Spanish and Mandarin. These 15 new representatives have greatly increased the speed with which the PUC answers calls to our complaint hotline and reduced our complaint backlog by almost half (despite an unprecedented caseload surge in Fall 2006 due to the Lifeline income verification program required by the FCC).

The PUC has performed an intensive reassessment of our CAB business processes and are redesigning our procedures on how we handle consumer calls, including training manuals, comprehensive standardized procedures, and integration with an improved information management system. A new CAB Technology RFP is being prepared now to implement a major upgrade to our outdated consumer inquiry and complaint information management system (CIMS) to greatly improve our CAB processes and tie into our enforcement activities. The changes we contemplate will give our Commission's CAB group modern tools to perform their job well.

The PUC staff, the phone companies and consumer groups developed four consumer brochures called: "Tips You Should Know About Phone Service," "Understanding Your Phone Bill," "Tips About Buying Wireless Service" and "Slamming and Cramming." The brochures are written in plain English, and are being distributed by the PUC, consumer groups and community based organizations throughout the state. The four brochures have been translated into four languages and will be distributed in many limited English communities.

The PUC has implemented a new consumer education website, www.calphoneinfo.com, where consumers may be educated about the newly competitive telecommunications marketplace and become smarter communications shoppers. This leading edge consumer website offers easy to understand information on communications issues in twelve languages, and is accessible to the deaf and disabled and the visually impaired. Our four new consumer brochures discussed above are also available on the website for download in various languages. The website provides links to the PUC complaint form and other telecommunications resources such as the FCC and FTC websites. The website has the text of four consumer brochures in the following languages: English, Spanish, Chinese, Tagalog, Vietnamese, Korean, Thai, Hmong, Cambodian, Arabic, Farsi, Khmer, Armenian, and Russian. The website had over 20,000 hits per month in the

early months, and currently averages about 2,000 hits per month, at a rate greater than our PUC online complaint web page.

In Fresno on October 18, 2006, the PUC held the first of nine planned consumer "Bill Forums." A Bill Forum is where the PUC, community-based organizations, phone carriers and electric utilities hold a joint event in a community to educate consumers that live there on our utilities public policy programs, help answer their questions about their bills, and can perform complaint intake in various foreign languages for that community. We developed the forum content and procedures with the phone companies and the community based organizations.

The PUC is issuing two contracts to implement long term consumer education programs, through community based organizations and for media efforts to reach hard to reach public members. We continue to work with phone companies and CBOs on issues relating to a new brochure to explain what to do if disconnected from phone service, to explain late payment fees and when they are billed, to explain the role of collection agencies and to explain VOIP services and their characteristics.

On language issues, the Commission has conducted research including demographic research to assess language access issues involving phone service. Four public meetings were held for input in Los Angeles, Fresno, Stockton and San Diego to collect information from impacted communities. Two follow up workshops were held by the staff. On October 5, 2006, the PUC staff produced a report entitled "Challenges Facing Consumers With Limited English Skills in the Rapidly Changing Telecommunications Marketplace" to help guide the Commission in addressing LEP issues. Having attended many of the public workshops, I can attest to the many things that the agency learned by performing this public outreach. Under President Peevey's leadership, the PUC is now determining whether new rules, policies or guidelines are warranted given what we have learned.

The PUC has implemented various enforcement programs and networks, including coordination with external partners. We established a Fraud Hotline, so incoming consumer calls alleging fraud would be properly handled on an expeditious basis. We have held workshops on cramming related reporting requirements. We have developed and implemented the Slamming Citation Program. We hired four new Enforcement Analysts for the Telecom Fraud Unit. We have developed and coordinated collaborative networks with other law enforcement agencies for case prosecution. We

have met with outside law enforcement agencies, the FCC, the FTC, and other state regulators as well as community based organizations.

10. You authored the CPUC's recent Uniform Regulatory Framework (URF) decision. That decision relieved AT&T, then Pacific Bell, of restrictions imposed upon them because of substantial and repeated marketing abuses, particularly of low-income and limited English-speaking residents. These abuses included misleading advertising, aggressive telemarketing, and deceitful sales presentations which the CPUC had previously enjoined. The CPUC decided to reconsider this part of the decision after consumer advocates protested.

Please explain how the record in the URF case supported relieving AT&T of its marketing restrictions. Were parties given notice that the Commission was considering lifting those restriction?

How did the URF decision come to relieve AT&T of specific disclosure requirements?

The URF decision came to relieve AT&T of its disclosure requirements because the record in the proceeding showed that competition in telecommunications markets makes marketing and pricing restrictions that apply to one carrier unfair. In addition, none of the parties, including DRA and TURN, raised the point during the proceeding that certain marketing restrictions imposed on AT&T resulted from past marketing abuses.

Until after the issuance of the URF decision, I had no personal knowledge of the enforcement proceeding that led to marketing restrictions on AT&T. The proceeding that imposed the marketing restrictions on AT&T was decided 5 years before I joined the Commission.

When subsequent filings by TURN, UCAN and DRA made it clear that the Commission had imposed some marketing restrictions on AT&T in a past enforcement action, I took action to develop a full record to address the issues raised. Specifically, on December 11, 2006, I released a scoping memo for Phase II of the URF proceeding to develop a record that will consider, among other issues, whether special requirements are still needed for AT&T. The scoping memo asks that parties address the relationship between the remedial disclosure requirements imposed on AT&T and the disclosure requirements imposed on all other carriers. Moreover, I've ensured that this scoping memo was served on TURN, UCAN and DRA and all parties to the earlier enforcement action.

No harm will occur while the Commission considers this matter. In particular, the California statute that was used to penalize Pacific Bell in 2001, Public Utilities Code § 2896, remains in effect and will deter any potential marketing abuses as we investigate this matter. In addition, AT&T reinstituted several of the tariff provisions that it had proposed to remove. Specifically, AT&T has promised to address any customer inquiry before initiating marketing. Also, on December 14, 2006, the Commission took additional steps to ensure that no carrier could file an advice letter to eliminate similar customer disclosures.

In summary, URF decided the issue of marketing disclosures based on the facts in the record. When new facts came to light, I reopened the record. Pending resolution of these issues through Phase II of this proceeding, laws and tariffs ensure no harm will occur to consumers.

Water

11. The CPUC is charged with the economic regulation of investor-owned water companies and water systems. You have indicated a special interest in the Commission's actions in this area.

Last fall, the Commission adopted a "Water Action Plan" that established a series of policy goals for regulated water systems. Those goals included maintaining the highest standards of water quality, strengthening water conservation, promoting water infrastructure investment, assisting low-income ratepayers, streamlining CPUC regulatory decision-making, and setting rates that balance investment, conservation, and affordability.

What specific steps have you taken to implement the Water Action Plan? What steps has the Commission taken to coordinate its activities under the plan with those of the Department of Health Services Office of Drinking Water, the State Water Resources Control Board, and the Department of Water Resources?

I support the Commission's Water Action Plan, which was approved one month before I joined the Commission. I want to clarify that it is Commissioner John Bohn that is leading changes in the water regulation arena.

In response to the Water Action Plan, the CPUC has done the following in 2006:

- The PUC held a Water/Energy Symposium in Sacramento on March 28, 2006 to determine the synergies between energy and water conservation. The pumping of water in California is extremely energy intensive. As a result of the March symposium, we have ordered the energy utilities to file applications on January 15, 2007 to initiate a \$10 million pilot to reduce energy consumption required to operate water systems, including the pumping of water.
- The PUC held a Water Quality – Affordability Symposium on September 12, 2006 in Oakland. The symposium included the CPUC, DWR, the State Water Quality Control Board, and the Department of Health Services. All agencies agreed that collective efforts would be mutually beneficial. As a result, staff representatives of the four agencies met on November 7, 2006 in Richmond to discuss future collaborative efforts. One specific outcome was for the CPUC to participate in the DWR's Water Plan. DWR is now proposing a more open process as it develops its Water Plan.
- The following Class A water companies have filed applications to implement the Water Action Plan: Cal American in its General Rate Case request for its Los Angeles districts (filed January 2006), Golden State for all districts (filed September 2006), California Water Service Company (filed October 2006). The following companies have been ordered to file applications: Park, San Jose, Suburban, and Valencia (by Administrative Law Judge ruling).
- At the November 2006 meeting, the Commission adopted low-income programs for Cal American Water, Cal Water Service, and Valencia Water Company. Since the development of low-income programs for the water industry is relatively new, Commissioners discussed the importance of collecting data that would ultimately lead to a rulemaking to consider an industry-wide fund for low income programs.
- On December 14, 2006, the CPUC opened a broad water rulemaking that proposes streamlining measures for processing Class A water company general rate cases and implementing the Water Action Plan.
- I favor reducing regulatory uncertainty and supporting infrastructure investment by water utilities.
- I support water conservation programs. I have voted for rate designs that encourage conservation. I support the creation of water conservation programs modeled on the Commission's successful energy conservation programs.

JUL 20 2006

Nettie Sabelhaus
Rules Committee Appointments Director
Room 420
State capitol
Sacramento, CA 95814

Appointments

Dar Ms. Sabelhaus,

Please find below my responses to Chairman Perata's letter of June 20, 2006.

Paula A. Cordeiro

Senate Rules Committee Questions

Goals

1. Please provide a brief statement of goals that you hope to accomplish while serving as a member of the CTC.

I hope to: 1) help streamline the credentialing processes; and, 2) investigate a national accreditation option for university program approvals.

Long-term Fiscal Health of Commission on Teacher Credentialing

2. What steps can CTC take to better anticipate the budget fluctuations that typically occur because of changes to the teacher workforce?

Improve the contracting process for teacher exams. Use the current data available regarding teacher shortages to inform decisions. I have seen little evidence that Commissioners are aware of the available data.

3. Does CTC have plans to either increase revenues or reduce operational costs?

Both are on the table. Our immediate challenge with a new Executive Director is to give this charge to him/her

Accreditation of Teacher Preparation Programs

4. How is CTC addressing the shortcomings of its accreditation process recently identified by LAO?

There are several inaccuracies in the report (see letter from the Credential Analysts association as well as the many other letters that have been written for examples) We plan to address any and all deficiencies, with due speed) once we are sure they are indeed deficiencies.

5. Since suspending the accreditation reviews, what has CTC does to restructure and improve its accreditation system?

First, at the last meeting we voted to begin reviews again. I requested that this item be place on the agenda since all universities have been severely impacted. In addition, the Board reviews processes have been expedited.

6. What has been the impact of suspending CTC's accreditation process on teacher quality in California? When will CTC's accreditation process be fully ramped-up? Is there currently a backlog of programs requiring review?

Yes, there is a backlog and yes we have asked the staff to present a plan in August for ramping up since we voted to restart visits at the last meeting.

7. The Legislature has authorized the California Department of Education to contract for a teacher information system feasibility study report. Assuming a teacher information system were to be developed, what types of accreditation-related data would assist CTC in its accreditation-related activities?

California needs 'teacher identifier' numbers, just as we will soon have for children. Also, PACT type TPA's rather than ETS's TPEs are what we need; they are content specific rather than generic.

If one reviews of the scientific literature on teacher education one would see that the normative knowledge base for teacher education is deep and richly developed, however

the empirical knowledge base is very thin. If we have both student and teacher identifiers, then we can build the empirical knowledge base.

Teacher Credentialing

8. Does CTC have plans to streamline the credentialing process and simplify the steps a teacher candidate must take to become fully credentialed? If so, please explain.

Yes, we are discussing all types of alternate routes. The challenge is that any alternate route must be highly quality, not simply expeditious.

9. Is CTC doing anything to eliminate major redundancies in the credentialing process, such as requiring application materials to be reviewed by CTC, university teacher preparation programs, and county offices of education?

The question is unclear since that's not the current process.

Governance

10. Do you believe there should be changes made to the CTC governance structure to improve teacher quality in California?

Yes. I am an at-large member. Fortunately, I'm an education dean so I 'understand' the current system. Also, I know what other states do in credentialing. Many of my fellow commissioners don't know; that's a big disadvantage. There are other states that we can look to for models and ideas, but very few people on the Commission have any understanding of the national policy picture for teacher preparation and credentialing.

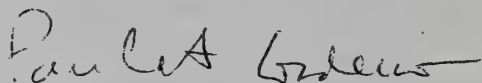
11. Do you have any recommendations for restructuring or streamlining any of CTC's core functions.?

I have many ideas. I look forward to bringing them to the Commission. I have only attended two meetings thus far and I now know that I can actually put items on the agenda. I

will do so. I'm excited that we will hire a new ED who can move the agenda.

12. What is CTC doing to improve accountability and clarify who is responsible for core functions associated with improving teacher quality in the state?

Again, I'm new to the board. It is my hope that our new Executive Director will help us 1) streamline; 2) improve accountability and 3) have considerable understanding of national policy in this area.



Paula A. Cordeiro

July 13, 2006

SENATE OFFICE OF RESEARCH
Analysis for Senate Rules Committee
Confirmation Hearing



APPOINTEE

RACHELLE B. CHONG

MEMBER, PUBLIC UTILITIES COMMISSION

APPOINTEE BACKGROUND

Appointed by Governor Schwarzenegger, effective January 12, 2006

President, Carina Jewelry, Inc. 2001—present

Mediator/Arbitrator and Expert Witness, self-employed 2001—2005

General Counsel and Vice President, Government Affairs,
 BroadBand Office, Inc. 2000—2005

Partner, Coudert Brothers 1998—1999

Commissioner, Federal Communications Commission 1994—1997

Partner, Graham & James 1990—1994

Associate, Kadison Pfaelzer Woodard Quinn & Rossi 1984—1987

Bachelor of Arts, Journalism and Political Science,

University of California, Berkeley

Juris Doctor, University of California, Hastings College of the Law

DISCUSSION OF ISSUES AND POTENTIAL QUESTIONS

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POSITION BACKGROUND

The California Public Utilities Commission (PUC) regulates privately owned telecommunications, electric, natural gas, water, railroad, rail transit, and passenger transportation companies. The PUC assures that utility customers have safe, reliable utility service at reasonable rates, protects utility customers from fraud, and ensures fair competition.

The governor appoints five commissioners for six-year staggered terms and selects one of the five to serve as commission president.

The PUC is organized into several advisory units, an enforcement division, a consumer advocates division, and a strategic planning group. The commission also has a public advisor, who helps the public participate in commission proceedings, and a unit that informally resolves consumer complaints.

ELECTRICITY

California deregulated its electric market in 1996, changing the way power was delivered to homes and businesses across the state. Traditional service (when the utility was the sole provider of electricity and was vertically integrated as the owner of power plants, transmission lines, and distribution facilities) was replaced by a system in which customers could choose their electricity supplier and utilities were encouraged to sell their power plants.

In the current deregulated system, core customers (residential and small business customers) buy electricity from the utilities, while noncore customers (large industrial and other big users, such as the University of California, buy electricity from any generator on the open market. This process of buying electricity on the open market by large users is called direct access. Currently, direct access has been suspended by the Legislature for new large electricity customers until the Department of Water Resources is no longer in the business of purchasing electricity—a business that will end with the completion of the department's long-term contracts in 2010.

Some observers feel this deregulation led to the 2000–2001 energy crises, and that the change in market structure led to volatile price increases. These observers feel that the state should return to a regulated utility-based electricity market structure. Others argue that while deregulation was flawed, market-oriented changes can be made to make the deregulated system work.

As the 2000–2001 energy crisis illustrated, California is vulnerable to electricity shortages. In 2004 the Independent System Operator set peak demand records seven times, in spite of average weather conditions, and on September 10, 2004, there were insufficient reserves available in southern California. The Energy Commission’s 2007 summer forecast predicts that, if we have typical weather, the electricity reserves will meet the state’s goal of 15 percent more power than needed. This is a smaller cushion than the state experienced in 2006. If we have extremely hot weather, the commission forecasts reserves of 5.3 percent, which would trigger calls for emergency conservation.

Several years ago, the Legislature created the Renewable Portfolio Standard (SB 1078, Sher, Chapter 516, Statutes of 2002), which requires utilities to purchase a specified minimum percentage of electricity generated by eligible renewable energy resources such as wind, geothermal, small hydroelectric, or solar. Four years later, few new renewable energy projects have been built. Some observers believe the commission has lagged in implementing the law, and others have said the process is excessively complex.

The commission is responsible for assessing whether new transmission lines are needed and that the state’s environmental review process is adequately completed. This process of siting (or determining where to place) transmission lines is often controversial.

Electricity

- 1. What is the Public Utilities Commission doing to ensure an adequate and affordable supply of electricity for next summer—and for the long term? What can the PUC do to make sure Southern California will have adequate power reserves?**
- 2. What steps do you recommend for lowering electricity rates and improving energy efficiency?**
- 3. What steps would you recommend for diversifying electricity supplies, improving the transmission infrastructure, and strengthening system reliability?**
- 4. What changes would you recommend to the current market structure? Would you support re-regulation of the market, increased direct access by additional market participants, or a core or noncore model?**
- 5. If there are changes in the market structure, how would you protect residential ratepayers from price volatility, as was seen in 2000 and 2001, while at the same time providing for the financial health of utilities?**
- 6. What can be done to increase the number of renewable energy projects that can be built in the state?**
- 7. Under what circumstances, if any, would you support the siting of transmission lines across state parks and wilderness areas?**

* * * * *

NATURAL GAS

Natural gas is an unregulated commodity that appears as a separate component on a customer's monthly energy bill. It is also the fuel that runs the turbines for natural gas-fired power plants throughout the state. Its use has greatly increased since becoming a cleaner fuel.

During the energy crisis, residential consumers saw a significant increase in their electricity bills due to a substantial increase in natural gas prices. Natural gas prices at the wellhead had exceeded what are usually reliable forecasts, and prices at the California border were considerably higher than elsewhere in the country. This meant that not only had the price for natural gas gone up, but so did the price for transporting it to customers in California.

The sharp rise in price was attributed at least in part to a reduced investment in the drilling for new supplies over the past decade. Investigations by the Federal Energy Regulatory Commission and others also have uncovered evidence that one of California's major suppliers, El Paso Gas Corporation, may have improperly caused congestion on the gas pipeline through one of its own affiliates. The constrained supply into California was a major factor in causing gas prices to soar.

In the last few years, increased drilling in North America has relieved some of the pressure on natural gas prices, but increased natural gas use by industry and new and repowered electric generating facilities has kept demand high.

Natural Gas

1. What should the state do to ensure an adequate supply of natural gas?

2. How can the state increase the natural gas supply and its usage while also addressing the adverse air quality and climate changes caused by fossil fuel usage?
3. What steps do you support to ensure that the state does not become overly reliant on natural gas as a fuel source for electricity generation?

* * * * *

TELECOMMUNICATIONS—CONSUMER BILL OF RIGHTS

In May 2004 the commission adopted a Consumer Bill of Rights for telephone customers. This Bill of Rights offered fundamental telecommunications consumer-protection rules to govern telephone and cellular marketing and sales practices, including protections for carrier disclosure, marketing practices, service initiation, and charges. Last January the commission voted to stay the implementation of these protections.

In March 2006, on a 3-2 vote, the PUC adopted a revised Bill of Rights that replaced the more consumer-friendly version that was adopted in 2004. The new version was opposed by the attorney general and consumer groups and supported by the telecommunications industry and business. The protections in the measure rely heavily on market competition, consumer education, and faster complaint resolution, instead of the previous specific consumer-protection rules governing telephone and cellular marketing and sales practices and the disclosure of marketing practices, service initiation, and charges.

Telecommunications—Consumer Bill of Rights

1. What were your reasons for supporting the telecommunications Bill of Rights that was adopted last March? If you disagree with consumer groups that it weakened consumer protections, explain why.
2. How can consumers request specific information? Will the additional consumer education provide what consumers need and want to know?

* * * * *

TELECOMMUNICATIONS—INTERNET

The Legislature directed the PUC to develop a plan for encouraging the widespread use of an advanced communications infrastructure (SB 1563, Polonco, Chapter 674, Statutes of 2002). In 2005 the commission released a draft report on broadband deployment in California, which noted that there was a digital divide among the state's population based on ethnicity and income.

The *Los Angeles Times* reported in April 2005 that the commission voted to withdraw its legal challenge to federal preemption of states in the voice-over-Internet protocol services.

Telecommunications—Internet

1. Regarding the use of broadband on the Internet, the commission's draft report states that there is a digital divide based on ethnicity and income. What specific steps can the commission take to address this divide?

2. Please explain why the commission voted to withdraw from the legal challenge of federal preemption of states in the voice-over-Internet protocol services. Why is federal regulation preferable to state regulation?

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WATER

The commission is charged with the regulation of investor-owned water companies and water systems. Last fall the commission adopted a *Water Action Plan* that establishes a series of policy goals for regulated water systems. Those goals include maintaining the highest standards of water quality, strengthening water conservation, promoting water infrastructure investment, assisting low-income ratepayers, streamlining commission regulatory decision making, and setting rates that balance investment, conservation, and affordability.

Water

1. What specific steps have you taken to implement the *Water Action Plan*?
2. What steps has the commission taken to coordinate its activities under the plan with those of the Department of Health Services Office of Drinking Water, the State Water Resources Control Board, and the Department of Water Resources?

* * * * *

REDUCING GREENHOUSE GAS EMISSIONS

In 2005 the governor issued an executive order directing state agencies to reduce greenhouse gas emissions and in recent months the PUC ordered the investor-owned utilities to do the same. In addition to activities like energy efficiency and renewable energy procurement, the PUC has adopted greenhouse-gas emission criteria for utility electricity procurement, as well as a policy statement on greenhouse-gas performance standards that addresses emissions from conventional fossil fuel resources.

Reducing Greenhouse Gas Emissions

- 1. Is the PUC coordinating its greenhouse-gas emission reduction standards with other state agencies, and if so, how is that being accomplished?**

* * * * *

Prepared by Kip Wiley

PUBLIC UTILITIES COMMISSION

Name	Gender	Term Ends
Michael Peevey, President	M	January 1, 2009
Geoffrey Brown	M	January 1, 2007
Rachelle Chong	F	January 1, 2009
John Bohn	M	January 1, 2011
Dian Grueneich	F	January 1, 2011

SENATE OFFICE OF RESEARCH
Analysis for Senate Rules Committee
Confirmation Hearing



APPOINTEE

JOSEPH NUÑEZ

MEMBER, STATE BOARD OF EDUCATION

APPOINTEE BACKGROUND

Appointed by Governor Schwarzenegger, effective March 28, 2006

California Teachers Association

Associate Executive Director, Governmental Relations	2004—present
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Assistant Executive Director	2000—2004
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Legislative Advocate	1997—2000
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UniServe Director	1995—1997
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Teacher, Santa Maria Joint Union High School District	1975—1994
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Bachelor of Science, Ornamental Horticulture,

California Polytechnic University

Master of Science, General Agricultural Sciences,

California Polytechnic University

DISCUSSION OF ISSUES AND POTENTIAL QUESTIONS

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STATE BOARD OF EDUCATION—GOALS, ROLES, AND RESPONSIBILITIES

The State Board of Education is responsible for setting policy and adopting rules and regulations governing standards, curriculum, instructional materials, assessment, and accountability. The board also is responsible for approving waivers to certain provisions of the Education Code, reviewing district reorganization plans, and implementing federal programs. Some duties overlap with those of the state superintendent of public instruction.

The board has ten members who are appointed by the governor for four-year terms and subject to confirmation by a two-thirds vote of the Senate. In addition, a student member is appointed by the board for a one-year term. All 11 members have full voting rights.

In recent years the board's relationship with key stakeholders has become strained. There also have been complaints that many important board agenda items are modified or added at the last minute, limiting public input and manipulating the advance notice requirements of the Bagley-Keene Open Meeting Act. This issue was raised a few years ago, and the board took action to improve the notification process. However, the issue is being raised again.

Goals, Roles, and Responsibilities

- 1. What is your general assessment of the relationship between the state board and the Legislature, educational organizations, and other stakeholders? What have you done to strengthen these relationships?**

2. At some of the most recent board meetings there has been difficulty maintaining a quorum, so agenda items have been rescheduled or rushed through. Members of the public who want to participate find it difficult when plans change so quickly. How would you respond to the concern that the board does not make public input a priority?

* * * * *

NO CHILD LEFT BEHIND ACT

The federal No Child Left Behind Act (NCLB) requires integration of the state and federal accountability systems. Most notably, the federal law requires the state to define student proficiency according to standards-aligned assessments, ensure that all schools make adequate yearly progress toward defined proficiency levels, and intervene with or sanction schools that do not meet or make yearly progress toward their defined proficiency targets. In addition, NCLB requires all teachers of core academic subjects to be highly qualified, as defined. Schools that do not make their growth targets for two consecutive years are designated as Program Improvement schools and, as such, are eligible for assistance in revising and implementing a plan for improvement. The subsequent interventions in these schools can be extensive and costly.

In contrast, the Academic Performance Index (API) is the centerpiece of California's academic accountability system. The state department of education calculates the APIs for California public and charter schools annually and publishes school rankings based on the scores. Each school is expected to meet a minimum annual API growth target of 5 percent.

In California, the challenge is aligning existing state requirements and assessment tools with federal law. California has been granted additional flexibility under the new NCLB guidelines regarding accountability and the assessment of students with disabilities. However, California has yet to receive additional flexibility for performance on the reading, language arts, and mathematics assessments of English learners who have been enrolled in United

States schools for less than three years. The California Department of Education contends that without additional flexibility, the state will have great difficulty conforming to the parameters of NCLB because of the extremely diverse cultures and languages in California.

No Child Left Behind Act

- 1. In your opinion, does the state's plan to assist the large and growing number of schools in Program Improvement adequately address the magnitude of the problem? What else can be done?**
- 2. The state board has been working with the federal department of education to harmonize the state's accountability system with the federal system. If successful, what will be the overall benefit to California?**
- 3. Do you believe that policies and resources are in place so that California pupils will meet or exceed the "proficient" standard by 2012? If not, what should the state do between now and then to meet this goal?**

* * * * *

ENGLISH LEARNERS

The California Department of Education reports that approximately 25 percent of California's K-12 students—about 1.6 million—are English learners. California has had great difficulty serving the needs of English learners. They perform at substantially lower levels on standardized tests than English-proficient students. In addition, test results from the high school exit exam indicate that English learners performed 33 percent lower than the state's overall passing rate on the English-language arts exam, and 24 percent lower than the state's passing rate on the mathematics exam.

California's success in meeting the needs of English learners is mixed. The good news is that English learners are making gains in achieving their English proficiency. Specifically, results from the 2005 California English Language Development Test showed that 47 percent of California English learners scored at "early advanced" or "advanced" in overall proficiency. Compare this to only 34 percent who scored at the same level in 2002 and 25 percent in 2001.

However, many students remain classified as English learners even after many years of education in the United States. According to the Human Resources Research Organization's "Independent Evaluation of the California High School Exit Examination: 2006 Evaluation Report," of the current English learners, 44,000 have been enrolled in United States schools for 10 or more years (since kindergarten). And the Legislative Analyst's Office noted in a recent study that about half of the students who began kindergarten as an English learner will be reclassified as fluent in about six years.

While there has been an increase in the number of students achieving proficiency, the process is taking several years.

English Learners

- 1. Why are students remaining classified as English learners for so long? What is the board doing to expedite the learning and reclassification of English learners?**
- 2. What is the board doing to improve the quality and quantity of instructional materials for English learners?**
- 3. It has been said that English learners take an average of six years to be redesignated as proficient. Is that an appropriate amount of time? If not, what should be the goal?**

* * * * *

CALIFORNIA HIGH SCHOOL EXIT EXAM

A recent report by the Human Resources Research Organization found that, excluding students with disabilities, nearly 75,000 students from the class of 2006 had not satisfied the exit exam requirement by the end of the 11th grade. While approximately 36,000 of these students passed the exam in time to graduate high school with their peers, nearly 39,000 others did not.

While the statewide exam passage rate is just over 90 percent, the passage rate for minority and poor students is much lower: 84 percent for African American students; 76 percent for English learners; and 86 percent for economically disadvantaged students.

The 2006–07 state budget included funding for two additional administrations of the exam, and \$75.1 million of supplemental instruction to pupils who have failed or are at risk of failing the exam. The state board has consistently reaffirmed its commitment to the exam and is resolved to oppose any attempt to lessen its requirements.

California High School Exit Exam

- 1. How is the board addressing the problem of persistently low passage rates not only for students with disabilities and English learners, but also for African American and economically disadvantaged students?**
- 2. How can the board increase school district accountability for students at risk of failing the exit exam?**
- 3. The 2006–07 state budget contains \$75.1 million to provide additional supplemental instruction to students who have failed or are at risk of failing the exit exam. The 2005–06 budget contained almost \$68 million for the same purpose. How has this remediation funding improved passage rates on the exit exam?**
- 4. What impact has the exam had on dropout rates?**

- 5. What policies is the board currently pursuing to increase the number of pupils who stay and succeed in school through graduation?**

* * * * *

DEVELOPMENT OF A LONGITUDINAL DATA SYSTEM

California does not currently have a system in place to collect and track individual student achievement over time. Legislation passed in 2002, SB 1453 (Alpert), Chapter 1002, Statutes of 2002, establishes the California Longitudinal Pupil Achievement Data System, which provides for the retention and analysis of pupil achievement data.

SB 1453 requires the assignment of a unique identifier to each student in California public schools, from kindergarten through 12th grade, in order to track student achievement over time. The full implementation of this system is not expected to be complete until 2008. The 2006–07 state budget provides almost \$34 million for implementation of the longitudinal data system and the transition of school districts to the system.

Development of a Longitudinal Data System

- 1. What is the status of the longitudinal data system's implementation and what is the board doing to ensure that the implementation occurs in a timely manner?**

* * * * *

INSTRUCTIONAL MATERIALS

The state board is constitutionally required to adopt instructional materials for grades 1 through 8. Local school boards are authorized to adopt texts and materials for secondary grades 9 through 12. Although school districts are free to purchase instructional materials with their own funds, state-provided funds

can only be used for adopted materials, making the approval of those materials the primary means by which the board can influence curriculum and instruction.

The state board approves the adoption of curriculum frameworks and instructional materials based on the recommendations of the Curriculum Commission. The Curriculum Commission makes its adoption recommendations based on input received from the Instructional Materials Advisory Panel, publishers, and the public. The State Board is supposed to consider the commission's advice, related documents, and public comment prior to the adoption of instructional materials.

Over the past year there has been increased public and legislative support for more local control of instructional materials, and there is a growing concern about the fairness of the Curriculum Commission's process for adopting textbooks.

Instructional Materials

- 1. Do you believe that a larger selection of board-adopted instructional materials would serve students better? Should state law be amended to increase the minimum number of programs adopted by the board for each core area?**
- 2. How would you encourage more publishers to submit bids?**
- 3. Is the perception correct that the consideration of publishers is limited to an exclusive group? And if so, how would you remedy it?**
- 4. Could you give the committee some examples of local participation in the curriculum process?**

* * * * *

Prepared by Lee Angela Reid

STATE BOARD OF EDUCATION

Name	Gender	Ethnicity	Occupation	Expiration of Term
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HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA



STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

THURSDAY, JANUARY 4, 2007
11:05 A.M.

SENATE RULES COMMITTEE
STATE OF CALIFORNIA

HEARING

STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

THURSDAY, JANUARY 4, 2007

11:05 A.M.

REPORTED BY:

JAMES F. PETERS, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

APPEARANCES

MEMBER PRESENT

SENATOR DON PERATA, Chair

SENATOR ROY ASHBURN, Vice Chair

SENATOR ROBERT DUTTON

SENATOR GIL CEDILLO

SENATOR ALEX PADILLA

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR ASHBURN

CHRIS BURNS, Consultant to SENATOR DUTTON

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

JOE NUÑEZ, MEMBER
State Board of Education

SENATOR DENISE DUCHENY

JACK O'CONNELL
State Superintendent of Schools

FRED JONES
California Business Education Association

LORI EASTERLING
California Teachers Association

Sherry Griffith
Association of California School Administrators

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By Appointees: Member, Board of Education:
JOSEPH NUÑEZ

PROCEEDINGS

CHAIRMAN PERATA: All right. Our one and only appearance today is by Joe Nuñez, who is a member of the State Board of Education.

And, Mr. Nuñez, please come forward.

Welcome.

Be careful.

MR. NUÑEZ: Chair's a little wobbly.

CHAIRMAN PERATA: A lot of work on there yesterday.

MR. NUÑEZ: Okay. That's why.

(Laughter.)

MR. NUÑEZ: I hope it gets less worked today.

CHAIRMAN PERATA: Bobbing and weaving.

MR. NUÑEZ: Hopefully there'll be less work today.

CHAIRMAN PERATA: You may open, sir.

MR. NUÑEZ: Thank you.

Certainly I want to thank Senator Perata and the Committee. I want to thank you and all of your staff for the time that you've given me the last number of days to talk about the work that we're doing at the State Board of Education. And a number of good issues came up, and it was my thought that the conversations went well.

You know, many people of good will, teachers,

1 parents, students, administrators, support staff, school
2 board members, and community members, are working very
3 hard every day in our schools to provide the best
4 standards-based education possible to all of your
5 students.

6 That being said, there certainly is a lot more
7 work to be done. The education of our poor and English
8 learner students, the drop-out rate, the achievement gap,
9 and the challenges of the federal NCLB Act are among the
10 critical issues that need our ongoing attention. I hope
11 that you will allow me to continue to work on solutions to
12 these important issues before us.

13 I want to thank the Governor and his staff for
14 their confidence, and you for this opportunity to continue
15 to serve on the State Board of Education.

16 Thank you.

17 CHAIRMAN PERATA: You can always tell a veteran;
18 quick and to the point. Thank you.

19 MR. NUÑEZ: I listen very carefully.

20 CHAIRMAN PERATA: Well, as a member of the Board
21 of Education you have first the jurisdiction, the
22 decision-making authority over 6 million kids and their
23 parents. And I was delighted that you were appointed,
24 principally because you have the personal experience of a
25 classroom teacher, which I share with you and very proud

1 of.

2 But what I'd like to do today is to talk a little
3 bit about -- to maybe get a report card, to use the jargon
4 of the moment, how the Board of Education and the
5 Legislature together are meeting the need of our kids.

6 Beginning in the 1990s the State Board adopted
7 standards of curriculum for each grade level. We now have
8 an exit exam to go with it.

9 The question is: Are we still -- are we helping
10 all of our students meet these standards? Through student
11 testing we see unequivocally that African-American,
12 Latino, and special interest students and poor students
13 generally are behind their peers. For a number of us
14 sitting in this dais, those are primary constituencies for
15 us.

16 So let's talk today about who's being left behind
17 and why.

18 California exit exam and the drop-out rate. The
19 exit exam rate -- pass rate by 12th grade is 90 percent.
20 But when the exam is given in the 10th grade, minority
21 students and poor students fail at much greater rates than
22 their peers. So what's the Board doing to address that
23 particular issue?

24 MR. NUÑEZ: Well, as you notice the Legislature
25 and --

1 CHAIRMAN PERATA: I'm sorry, Jack. Were you
2 going to introduce him?

3 STATE SUPERINTENDENT OF SCHOOLS O'CONNELL: I'm
4 sorry I'm late, Mr. Chairman.

5 CHAIRMAN PERATA: This is a new day in here. We
6 start on time.

7 STATE SUPERINTENDENT OF SCHOOLS O'CONNELL: I'm
8 impressed.

9 (Laughter.)

10 STATE SUPERINTENDENT OF SCHOOLS O'CONNELL: Joe,
11 isn't it?

12 (Laughter.)

13 MR. NUÑEZ: Superintendent.

14 STATE SUPERINTENDENT OF SCHOOLS O'CONNELL:

15 Mr. Chairman, I think you know Joe Nuñez.

16 Jack O'Connell, and nice being back again.

17 And, boy, you folks are on time. And so I
18 apologize for being late.

19 But Joe Nuñez is a long time friend. A teacher
20 when we first met, a Santa Barbara County guy. Very
21 successful. I know his family. Just an outstanding
22 individual. Longest tenure on the State Board of
23 Education, initially appointed by Governor Davis,
24 reappointed by Governor Schwarzenegger, and a great
25 appointment. A great background. A strong supporter of

1 accountability, strong supporter of our standards. A true
2 believer in high standards, high expectations for all of
3 our students.

4 I heard the part of the Chairman's question in
5 terms of high school exit exam. Strong believer in
6 providing a supplemental remedial services; and that's a
7 direct role the State Board has.

8 The Legislature and the Governor passed a great
9 bill this last year by Senator Torlakson, 1133, for \$3
10 billion. It was the California Teachers and I sued the
11 Governor, you might recall. And so the result -- and the
12 Governor I think a few days after that lawsuit reappointed
13 this guy to the State Board. So that says something I
14 think about the Governor and how good Joe Nuñez does.

15 But that's going to be more money that the State
16 Board and I are going to allocate to school districts in
17 that lowest decile. And we think that really will help.

18 We have on our website -- and Joe's helped us
19 with it -- best practices around the state, that he's
20 aware of, from teachers and schools in terms of students
21 being able to pass the high school exit exam. We've
22 identified almost two dozen programs, some great programs.

23 There's a school in Senator Ashburn's district
24 that -- the home of the Drillers. They had me down there
25 at Bakersfield High where they used their class-size

1 reduction money for high school exit. And the
2 superintendent took me through -- I think his name's
3 Carter -- maybe it was the principal -- took me through a
4 school and he said, "Look at this math class, Jack." And
5 there were about 40 kids in the class. Then we went to
6 the neighboring class and there were 10 kids. He said,
7 "Do you notice the difference between the two math
8 classes?" And I said, "Yeah, one had 40 and one had 10."
9 He said, "The students don't know it, Jack. But the kids
10 with 10 are the ones that have yet to pass the high school
11 exit exam." They were juniors and seniors. And so, you
12 know, he's concerned about the image of the students like
13 we are. You don't want to get labeled. And the students
14 didn't know why one class had 40 one, had 10.

15 So those kinds of programs. I was at a class in
16 the Palm Springs area about two, three weeks ago, early
17 December, and I said, "Why have 99 percent of your ELL
18 kids passed the high school exit exam?" And they
19 attribute it to working in concert with the middle school
20 teachers. The high school teachers are telling the middle
21 school teachers, the grades 7th and 8th, what standards
22 the student don't understand. So they're able to really
23 work.

24 So this is the kind of, you know, programs that,
25 you know, Mr. Nuñez has brought out. He's in a great --

1 you know, the Chief Executive for the California Teachers
2 Association, is really on the ground, in the trenches, has
3 that background, and has just been a big, big help to me
4 over there.

5 So I'm here in strong support of Mr. Nuñez.

6 CHAIRMAN PERATA: Appreciate that.

7 STATE SUPERINTENDENT OF SCHOOLS O'CONNELL: Thank
8 you for letting me come by.

9 So thank you very much.

10 MR. NUÑEZ: Thank you, Jack.

11 CHAIRMAN PERATA: You're welcome to stay if you'd
12 like to --

13 STATE SUPERINTENDENT OF SCHOOLS O'CONNELL: Yeah,
14 I will. Thank you, thank you. I'd be happy to stay.

15 CHAIRMAN PERATA:

16 MR. NUÑEZ: Is that called calling in the horses
17 to answer the questions?

18 (Laughter.)

19 CHAIRMAN PERATA: Yeah, I think --

20 (Laughter.)

21 CHAIRMAN PERATA: You were expecting a motion
22 now, are you?

23 (Laughter.)

24 MR. NUÑEZ: Calling in the cavalry to save the
25 day.

1 (Laughter.)

2 CHAIRMAN PERATA: Well, the question is: What
3 are you doing -- I think Jack probably touched on it a
4 little bit, and it's nice to hear there are things going
5 on like that, but -- well, you can answer the question.

6 MR. NUÑEZ: Obviously the Legislature provided
7 dollars for supplemental programs for students in the high
8 schools that haven't passed those classes. And so, as
9 Jack said, we are looking for best practices, finding
10 places where they're having more of their students
11 graduate, and then making those strategies available to
12 all schools so that they can do better jobs of increasing
13 the graduation rate.

14 CHAIRMAN PERATA: Now, going to the drop-out
15 question. What's the Board doing -- I mean it's a
16 pandemic problem in this state. And what are we -- what's
17 the Board doing as a priority?

18 MR. NUÑEZ: The biggest challenge we have,
19 Senator, is getting accurate data. And right now the --

20 CHAIRMAN PERATA: Same problem at UC.

21 (Laughter.)

22 MR. NUÑEZ: -- and getting accurate data to
23 actually be able to quantify what exactly the drop-out
24 rate is. And what we've done is we have been
25 advocating -- there are two programs we started out with

1 the CSIS Program that allows districts to move towards a
2 system of identifying students and putting a statewide
3 identification system together.

4 One of the problems that we've had statewide and
5 in our ability to implement NCLB is that we don't have a
6 statewide tracking system for individual students. And so
7 because of that, we moved now to what's called CALPADS.
8 And the hope is that in '07-'08 that we will have CALPADS
9 in place and we'll be able to track individual students,
10 and we will be able to have the data we need to accurately
11 do the demographics on the dropouts, who are they, where
12 are they, and how can we -- you know, we'll be able to
13 better put the resources where those students are with the
14 better data that we get.

15 So we're making progress. And the biggest
16 challenge we'll have -- in this last budget there was \$50
17 million for local school districts to accurately implement
18 and to put the data into the system, and that money was
19 vetoed out of the budget. So we need to have those
20 ongoing conversations so that the districts have the money
21 to do that work that they need to do.

22 CHAIRMAN PERATA: It would seem to follow then
23 that, as you have that data available, then there has to
24 be some metric system to sort of measure, now that you
25 have it, what are we doing about it and how successful we

1 are. Is that going on concurrent with this and thinking
2 along those lines?

3 MR. NUÑEZ: Yes, there are a number -- I mean
4 this is such a huge issue for all of us. And it's so high
5 on the priority for -- you know, it's the confluence of
6 the high school exit exam, dropouts, what's the impact.
7 And we are going to be having a retreat with the State
8 Board in February where this issue's going to be on our
9 agenda. And we're going to be talking about strategies
10 and ways that we can continue to get better data and
11 provide the kinds of programs that are necessary to try to
12 keep kids in school.

13 CHAIRMAN PERATA: The remedial needs, like that
14 40 to 10 -- and you probably saw that immediately too,
15 Jack. You went in there and said, "This is 40, this is
16 10," just like that, I bet.

17 (Laughter.)

18 CHAIRMAN PERATA: We're proud.

19 (Laughter.)

20 CHAIRMAN PERATA: We've been supplying some
21 money, not -- I'm sure never enough. But is there sort of
22 a state -- does the Board have a rubric? In other words,
23 are those ground-up efforts or are there any guidelines
24 that you have for the use of remedial money?

25 MR. NUÑEZ: Well, certainly the money when it

1 comes to us is targeted at certain populations of
2 students. So we have English learner students, poor
3 students, and students where -- and those that haven't
4 passed the exit exam. And so that's very targeted per
5 child. And I forgot the amount -- 5 or \$600 per child
6 that goes to those high schools specifically to provide
7 remediation and to get them to pass the high school exit
8 exam. So those dollars are targeted and they are going
9 out.

10 CHAIRMAN PERATA: So generally the drop-out rate
11 is the high priority of the Board?

12 MR. NUÑEZ: Yes.

13 CHAIRMAN PERATA: It reflects the --

14 MR. NUÑEZ: Yes, very much so.

15 CHAIRMAN PERATA: And then we've had some
16 discussions over the time, both with people who have come
17 here in your position and others, about special education.
18 And right now, I mean, do you think we should continue
19 what we're doing? Or is there a better way? What are
20 your thoughts?

21 MR. NUÑEZ: Special education is a huge
22 challenge. And the biggest challenge we have with special
23 ed is the variety of students that we serve in special ed,
24 all the way from resource children that are, you know,
25 right on the edge, to severely handicapped children that

1 are more cognitively disabled.

2 And so within that framework we've tried to
3 provide -- the law allows then each of those children to
4 have an IEP. And to the extent that we implement the
5 IEPs, we know we're doing our job.

6 The challenge we have is when to include those
7 children in the high school exit exam, when to include
8 them in the accountability system. And we're still
9 wrestling with those issues.

10 I'm surprised and always challenged when we talk
11 about: Do we include special ed children in the
12 accountability system? And when you say, "Well, should we
13 do something different for them?" the community of special
14 ed parents throw their hands up and say, "Oh, you want to
15 treat our children differently and you don't want to give
16 them all the same services that all children get."

17 So that's the challenge in the balance that we
18 have in trying to provide appropriate access and service
19 for special ed children. As you know, we did extend by
20 year their -- local school district's ability to give
21 special ed students a high school diploma. And those are
22 the kinds of ongoing conversations that we've been having
23 with you and the State Board.

24 CHAIRMAN PERATA: Okay. "No Child Left Behind."

25 First of all, just as a threshold statement, I am

1 hopeful that with the changes that are occurring in
2 Washington as we speak, that whatever they thought they
3 were doing with this law, they reflect on the fact that
4 they haven't done it correctly. I was enheartened by
5 George Miller's decision to accept the Chair of Education
6 as opposed to Natural Resources, which he was a senior on
7 both, because George was a strong advocate of "No Child
8 Left behind." And I cannot believe that he wanted it to
9 work out the way that it seems to be working out.

10 So having said that, we have about 2,000 of our
11 first schools in various stages of failure to the targets.
12 And under the law, you'll either have -- you and Jack or
13 they'll become charters or they'll be run to be, you know,
14 the options.

15 What's the Board's -- what's the temperature of
16 the Board now on "No Child Left Behind"?

17 MR. NUÑEZ: This is -- obviously we have been
18 charged with implementing NCLB at the state level. And
19 one of the things that I was actually very proud of at one
20 point, and one of the iterations of our board, because
21 we've had a number of changes over the year, we actually
22 had the opportunity -- and we came to a crossroads and we
23 had the conversation about, if we had the opportunity
24 between the statewide system and the federal system
25 emphasizing API over AYP, which should we do? And I was

1 very proud of the Board at that time that we actually
2 consciously talked about emphasizing API and the state
3 system over the federal system --

4 CHAIRMAN PERATA: Just for laughs, let's pretend
5 we don't know what either of those acronyms are.

6 MR. NUÑEZ: API is the state testing
7 accountability system, Academic Performance Index; and AYP
8 is the --

9 STATE SUPERINTENDENT OF SCHOOLS O'CONNELL:
10 -- Adequate Yearly Progress.

11 MR. NUÑEZ: -- Adequate Yearly Progress.
12 Instrument that the federal government has applied to --

13 COMMITTEE MEMBER PADILLA: -- no cheating.

14 MR. NUÑEZ: Thank you. You know, you're sitting
15 up there and all these acronyms are flowing through your
16 head and trying --

17 CHAIRMAN PERATA: I admit I never heard of AYP,
18 so thank you.

19 MR. NUÑEZ: Well, maybe we did our job really
20 well, because we keep emphasizing API. But that being
21 said, the --

22 CHAIRMAN PERATA: And you had the option to
23 choose?

24 MR. NUÑEZ: No, what we -- we didn't -- when we
25 had the option to emphasize one over the other, we always

1 tried to emphasize the state system.

2 The problem is that the AYP and the sanction and
3 identification of program improvement schools marches on.
4 And every two years the bar is raised and it becomes
5 harder and harder. And we knew from the very first time
6 when we started talking about NCLB that when we got to the
7 target date, that over 90 percent of the schools in
8 California would be in program improvement, because of the
9 static nature of the target that we were reaching toward.

10 And, as you know, what good is an accountability
11 system if everybody's sanctioned? If everybody's a
12 program improvement school, what do we get out of that and
13 how do we allocate resources appropriately?

14 And so it's been a very frustrating experience in
15 trying to, as former Secretary of Education talked about,
16 harmonizing the two systems. I believe at some point
17 they're not -- we're not able to harmonize the two
18 systems. That we do have an opportunity now to hopefully
19 make some changes in NCLB to make it more user friendly
20 for California.

21 And one of the things that's going on currently
22 is the Education Coalition is working on a consensus
23 document for issues that we all can agree on that should
24 be -- changes that should be made. And we're hoping that
25 when we get our part together, that we can come in and

1 share it with the Legislature and get your feedback to add
2 to that list, so that we are all speaking with one voice
3 to both the Chair of the Senate and the House committees
4 about changes that we really need in California as we move
5 forward.

6 CHAIRMAN PERATA: I mean right now there is an
7 LAO report that came out. And the proficiencies now are
8 set at the admission standards to CSU.

9 MR. NUÑEZ: That's correct.

10 CHAIRMAN PERATA: And the LAO, and I think others
11 have recommended, that those be reset to be in accordance
12 with the high school exit exam.

13 MR. NUÑEZ: I lost that vote. That came before
14 the Board. And Jack will confirm that -- I think I was
15 the only person on the Board at that time that voted to
16 reset the proficiency levels. But the Board feels very
17 strongly, and as a group, that the proficiency levels
18 should stay where they are, that we have high standards,
19 that we shouldn't acquiesce or change our standards --
20 lower our standards just because the federal government
21 has created this mess.

22 CHAIRMAN PERATA: So the feds have effectively
23 set a standard that we probably all would agree is not
24 very realistic and now we're caught -- we're swimming in
25 that --

1 MR. NUÑEZ: And what happened to us was -- and
2 this is the challenge we have -- is that you folks did the
3 heavy lifting, you passed accountability, you did the
4 standards, you set these high levels, but no one ever
5 dreamed -- and we set a proficiency level, we knew it was
6 at the university -- or at the college prep level. But it
7 was a goal. And we knew that we wanted kids to get there.
8 But we had a system in place to incentivize districts to
9 focus on poor kids and English learner kids because we
10 gave them more points at far below basic to move kids up.

11 But when the feds laid their NCLB over what we
12 were doing, they used the word "proficient," that they
13 wanted all children to be proficient. We had already used
14 the word, and then that's where the confusion came in.
15 And now we'll never be able to have all children at that
16 level by the time the target date gets here.

17 CHAIRMAN PERATA: Then what do you think happens?

18 MR. NUÑEZ: Well, I'm hoping that in this climate
19 that we're having in Washington that we can get some
20 common-sense changes to the NCLB law.

21 CHAIRMAN PERATA: Go visit them.

22 MR. NUÑEZ: We're hoping that we can get some
23 assistance from all of us together to put pressure to get
24 some changes.

25 CHAIRMAN PERATA: And I'm -- I'm hogging this,

1 but intentionally, because they were out late last
2 night --

3 (Laughter.)

4 CHAIRMAN PERATA: -- so I'm giving them a chance
5 to catch up.

6 COMMITTEE MEMBER CEDILLO: With you.

7 CHAIRMAN PERATA: Yeah, with me. But you noticed
8 that I was drinking bubbly water.

9 (Laughter.)

10 CHAIRMAN PERATA: You didn't notice.

11 English language learners, here we had -- you
12 know, there were some difficulty of -- in fact, a lot of
13 members had some difficulties with that last year. We
14 discussed that. I think you probably talked about it with
15 the other members. And basically the Legislative
16 Analyst's Office says that on average it takes six years
17 for elementary school students to reach proficiency in
18 California, which is even longer than for older students.

19 And, you know, I think you've in part answered
20 it. Do you think -- is it possible to get where you need
21 to go under the current law -- federal law?

22 MR. NUÑEZ: Oh, the federal law? You know, I
23 guess I'm more familiar with sort of the combination of
24 the state and federal programs that we have in place. And
25 I mean what we're doing now --

1 CHAIRMAN PERATA: Right.

2 MR. NUÑEZ: -- it's -- particularly in English

3 Language Arts, who we did --

4 (Thereupon music was heard outside.)

5 CHAIRMAN PERATA: Let me -- excuse me. What do

6 they do when the Governor's not here to stop that stuff?

7 There shouldn't be any dancing going on.

8 (Laughter.)

9 CHAIRMAN PERATA: The end of -- green dancing,

10 but even still.

11 (Laughter.)

12 CHAIRMAN PERATA: I'm sorry.

13 MR. NUÑEZ: He didn't know what to -- I thought

14 it was something I said.

15 (Laughter.)

16 MR. NUÑEZ: When we did -- all right. We'll rap

17 to the beat. We'll see say it to them --

18 CHAIRMAN PERATA: Yeah, rap it.

19 MR. NUÑEZ: Exactly.

20 As I was saying, the first round of English

21 Language Arts materials that we put in place were

22 standards-based, and we had strategies for English

23 learners. And for students that are two or more grade

24 levels below grade, we have interventions in place to

25 assist those children and to give strategies to teachers

1 to help them move those children into the mainstream as
2 quickly as possible.

3 And we're now currently involved in the second
4 round of textbook adoptions for English Language Arts.
5 And what we did is we went out and we talked to teachers
6 and we talked to the community and practitioners and we
7 got feedback. And we've added more strategies for English
8 learners, we've added more strategies for poor students,
9 we've added more strategies for African-American
10 struggling readers that were never there before, because
11 it was a need expressed by the field.

12 And so I think that we do have many strategies
13 and -- a lot of strategies in place to assist our English
14 learners. And particularly with the interventions that we
15 have when we know that children are two or more grades
16 below level, the interventions are in place to assist
17 teachers and their principals to get them to grade level.
18 And in the districts where they're implementing the
19 program to fidelity, we're getting great success in moving
20 those children forward.

21 CHAIRMAN PERATA: Just for the record, would you
22 just briefly summarize your view of what happened on the
23 whole Option 6.

24 MR. NUÑEZ: What happened was that there were a
25 group of -- there was a group advocating for a number

1 of -- for an Option 6 strategy. And they were strategies,
2 in my opinion, that were not standards-aligned, that
3 they --

4 CHAIRMAN PERATA: They were not aligned --

5 MR. NUÑEZ: They were not standards-aligned.

6 And we have in our standards in each grade
7 level -- we know in grade 1 what a child should be able to
8 do and what a child should know when they get to the end
9 of 1st grade. And in order to get them there, we need to
10 spend every moment on the standards to get them to the end
11 of the year. Option 6 in my opinion would have taken them
12 off of the standards for a while and would not have
13 engaged them in the academic English and the academic work
14 that needed to happen for the full year.

15 So that's --

16 CHAIRMAN PERATA: I just wanted to give you a
17 chance to put on the record.

18 MR. NUÑEZ: Thanks.

19 CHAIRMAN PERATA: You talk about some of the
20 strategies and all, but --

21 COMMITTEE MEMBER CEDILLO: Don, can I ask --

22 CHAIRMAN PERATA: Yeah, sure.

23 COMMITTEE MEMBER CEDILLO: -- rather than us
24 going back and forth.

25 CHAIRMAN PERATA: No, no. Go ahead.

1 COMMITTEE MEMBER CEDILLO: It's been a concern,
2 as you know, to a lot of people.

3 MR. NUÑEZ: Yes.

4 COMMITTEE MEMBER CEDILLO: On the Option 6 though
5 if it's not aligned or -- because you have to ask the
6 question -- okay, so then you don't use the Option 6, the
7 presumption is that then people meet the standards. And
8 if they're not meeting the standards, it seems that given
9 the challenges of the language it would be a factor in
10 them meeting the standards. So I mean have you, you know,
11 calibrated that? I mean it's -- you've laid out an
12 either/or, but it's a very complex scenario, and that's
13 just one aspect of, you know, the complexity of your
14 challenges.

15 But clearly it seems to me that in the absence of
16 pursuing Option 6, that there has to be some demonstration
17 that then people are meeting the standards. And it just
18 seems that for those particular students, that their
19 challenges would preclude that. And so do we know the
20 answer to that?

21 MR. NUÑEZ: Well, actually we've had a bit of
22 data and some strategies that would suggest that we're
23 having success. Actually LAUSD is a perfect example,
24 particularly in their elementary schools. They have been
25 having terrific success in moving their children through

1 the program.

2 COMMITTEE MEMBER CEDILLO: You should tell the
3 Mayor that.

4 (Laughter.)

5 COMMITTEE MEMBER CEDILLO: Or the Mayor may
6 disagree with you, I should say.

7 MR. NUÑEZ: Well, we actually -- and you -- I'm
8 sure you've seen the data showing statewide elementary,
9 and LAUSD actually above statewide scores for English
10 learners and moving them to English. And, you know, we
11 have great examples. Bradd's Elementary School in L.A.,
12 if you visit --

13 COMMITTEE MEMBER CEDILLO: A district right up
14 the street.

15 MR. NUÑEZ: -- I think they're just doing
16 terrific work in moving children to English. And they
17 have -- for children that are two grades below grade level
18 they have those interventions in place to use -- to have
19 that safety net then to move them into English.

20 So I think -- as I said, there are lots of people
21 of goodwill working really hard everyday trying to attend
22 to the needs of English learners and to move them into
23 academic English. And I think the standards, we have a
24 framework in place to have that happen. And lots of
25 evidence of that going on statewide.

1 CHAIRMAN PERATA: Alex.

2 COMMITTEE MEMBER PADILLA: Just a question,
3 because I wasn't here last year when whatever happened
4 happened between the Board and the Legislature, this
5 particular conversation.

6 But Option 6, is it an elementary school policy
7 question? Is it a middle school, high school?

8 MR. NUÑEZ: Elementary.

9 COMMITTEE MEMBER PADILLA: Elementary only.

10 And the percentage of schools that are sort of
11 performing above the statewide standards have shown that
12 improvement, is it 90 percent of the elementary schools,
13 50 percent of the elementary schools?

14 MR. NUÑEZ: I don't have that number. And I'm
15 happy to get that data for you, Senator. But I don't have
16 it at the top of my head.

17 COMMITTEE MEMBER PADILLA: I'll have more
18 questions later.

19 CHAIRMAN PERATA: One of the things that we
20 discussed with various Board members with regard to
21 instruction materials have been the relatively few bids by
22 publishers. What's the status of that?

23 MR. NUÑEZ: I'm actually very happy to report to
24 you -- and this was one of the -- sort of the outcries
25 from the first round of textbook adoptions. The

1 constitution -- or the law allows the State Board to do up
2 to five adoptions in core areas. And so in English
3 Language Arts all of the work was done to review the
4 standards and to look at the materials. And only two
5 series were selected. And that caused much frustration
6 and outcry from locals.

7 Many more publishers have stepped up to the plate
8 in this round. And we believe that we will have all five
9 slots filled in this round, and so that people will have a
10 full complement from which to choose. So that's good
11 news.

12 And I think part of the -- the challenge on the
13 part of publishers the first round was that they didn't
14 know what they were getting themselves into, because
15 California had just changed our standards pretty
16 dramatically, you know, our whole system pretty
17 dramatically. And some folks sat on the sidelines
18 watching to see what was going to come out of that. And
19 since we managed to keep the system in place, people are
20 coming and providing more opportunities.

21 CHAIRMAN PERATA: What's -- you know, you've been
22 on both sides of this professionally. What do you --
23 what's the optimum relationship do you believe the Board
24 should have to -- what is it, a thousand seventy-five
25 school districts, whatever it is? -- I mean the

1 interrelationship like when you're, you know, developing
2 curriculum? I mean what do you see -- and, as I said,
3 you're sort of our guy, not because I'm -- professionally
4 now, I'm not talking about, you know, Democrat/Republican.
5 But you are a teacher. You've been a public school
6 teacher and you're -- you know, you now are leading an
7 association of people dedicated to that.

8 And so optimally what would the relationship of
9 the Board be, do you think, to local governance?

10 MR. NUÑEZ: Well, I think the main issue is
11 access and transparency. And so the State Board obviously
12 works very closely with the Department of Education.
13 There are many issues -- the issues and data and whatever
14 we're working on, many times those issues are available on
15 the website. Whenever we're doing any kind of textbook
16 adoptions, the law requires hearings up and down the
17 state, a very specific protocol for getting feedback. We
18 do that. We have teachers that review the framework and
19 the textbooks to make sure they're aligned. And people
20 are doing this for free.

21 And we have hundreds of teachers coming and
22 reviewing the materials and making sure that they're
23 teacher friendly, that they're user friendly, and that
24 they're aligned to the standards.

25 So there are many opportunities for folks to plug

1 into the system. We -- this issue of communication has
2 been one that I talked to a number of you about. And the
3 Board has a retreat scheduled in February, and that's
4 going to be at the top of our list to talk about. How we
5 communicate the fact that we do have this process that is
6 open, that there seems to be some confusion around it, and
7 we need to do a better job of letting folks know.

8 The professional associations, the Education
9 Coalition folks in Sacramento, know very easily how to
10 access the system obviously. That's their job and there
11 work. And we're hoping also that they communicate out to
12 their constituents. But we have to always continually
13 work on those constituent kind of communications and
14 encouraging that outreach and two-way communication.

15 CHAIRMAN PERATA: Okay. Alex, did you have
16 questions?

17 COMMITTEE MEMBER PADILLA: Thank you.

18 I just wanted to follow up on some information
19 that you provided to the Committee. There was a
20 conversation about the adoption of textbooks and sort of
21 the balance as to how much the Board plays the role in
22 that of balancing that with the flexibility provided to
23 local school districts in textbook selection. Can you
24 just discuss that for a minute. And I'm particularly
25 interested because of AB 1381, the bill affecting -- LAUSD

1 last year. That seemed to be one of the elements of that
2 reform, if you will, that more textbook flexibility -- or
3 selection flexibility was going to be provided in Los
4 Angeles.

5 MR. NUÑEZ: Well, there are two overriding issues
6 with that question. One is that we do have a
7 standards-based system and all public schools are required
8 to select from the core academic materials that were
9 approved by the State Board.

10 The second overlaying piece -- or law that comes
11 into play is the Williams lawsuit. And the Williams
12 lawsuit was settled, and also provided as part of the
13 settlement that low decile schools would have available to
14 them standards-aligned materials.

15 So the law requires that for the core areas,
16 which are English Language Arts, math, science, and
17 history and social studies, that schools, particularly
18 decile 1 and 2 and 3 schools, select from
19 standards-aligned materials. And so they would have to go
20 to that approved list first. And where they would have
21 flexibility would be in the area of supplemental
22 materials, and because their first -- the first charge is
23 to buy the state-adopted instructional materials,
24 standards-aligned, and then when that is complete, then
25 they can use money on supplemental materials and they

1 would have flexibility there.

2 COMMITTEE MEMBER PADILLA: Okay. That's the way
3 it works. But I guess I'm interested in your position,
4 your philosophy. Is it better for local school districts
5 to have more or less flexibility to the -- that
6 preapproved materials list?

7 MR. NUÑEZ: Well, I think that it's really
8 important that districts select from the approved lists,
9 that the way that we provide -- we made a decision in
10 California that we would have a standards-aligned system,
11 and that children -- we know at the end of first grade
12 what a child should have known and be able to do. And the
13 way we hold people accountable to that is to have them
14 select from the state-adopted instructional list.

15 And so to the extent they would get their
16 flexibility in this next round when we have all five of
17 the textbook series chosen, they'll have more than two to
18 choose from. They'll have five to choose from. So that's
19 where their flexibility would be. But otherwise they
20 should definitely choose from the adopted list.

21 COMMITTEE MEMBER PADILLA: Strong advocate of the
22 adopted list?

23 MR. NUÑEZ: Yes.

24 COMMITTEE MEMBER PADILLA: Second question is an
25 offshoot of the previous conversation about English

1 language learners to Option 6 discussion.

2 You answered my first question, which was that it
3 particularly pertains to elementary school -- what is
4 that? -- grades 1st through 6th.

5 What happens -- because I see this a lot in my
6 own district -- let's say a family relocates, in my
7 particular case it's Los Angeles, LAUSD, and then in high
8 school age kids, they have English language learner
9 entering the system at the 8th, 9th 10th grade. They
10 don't have six years to catch up. What happens then?

11 MR. NUÑEZ: Yeah. A little bit of context. The
12 State Board of Education is responsible for selecting
13 textbooks K-8, and high schools are responsible for
14 selecting their own textbooks. And what the State Board
15 does is to try to provide -- we provide what are called
16 standard maps for instructional areas. And then teachers
17 can use those standard maps to evaluate materials from
18 textbook publishers to buy the materials that they -- the
19 textbooks that they need to teach their subjects.

20 So that being said, there are lots of strategies
21 that school districts use for newcomers. They put
22 newcomer schools together for children that are far below.
23 They try to do primarily language instruction. There are
24 just a -- you know, each district does a little bit
25 different kind of strategy. But we don't have any

1 specific policies at the State Board that go specifically
2 to that issue, because it's not our charge.

3 COMMITTEE MEMBER PADILLA: Well, why not? I mean
4 is it not a big enough issue or dynamic in California that
5 you want to address it?

6 MR. NUÑEZ: Well, the law doesn't give us -- we
7 don't have the authority to do that.

8 COMMITTEE MEMBER PADILLA: Are you prohibited
9 from discussing it --

10 MR. NUÑEZ: No.

11 COMMITTEE MEMBER PADILLA: -- or engaging in it?

12 MR. NUÑEZ: No. In fact, what we do is, in the
13 whole English language arena we actually engage -- for
14 instance, I was talking about the interventions that we
15 have for children that are two or more grade levels
16 behind. We have interventions in place that would help
17 teachers with strategies to move those kids forward. And
18 so those interventions would be available. In fact, some
19 high schools I have found are using those interventions.
20 Because, as you said, they don't speak any language, they
21 need to start at the beginning. And so they go and get
22 some of those elementary materials and those interventions
23 to try to give them as much assistance as possible.

24 COMMITTEE MEMBER PADILLA: I just found it
25 interesting, because again the example is somebody

1 entering the system at the 9th or 10th grade level where
2 their language skills are obviously not where they need to
3 be, but their proficiency in math or science is on par,
4 just in a different language, but our testing mechanism
5 doesn't capture that.

6 MR. NUÑEZ: That's one area that we all have to
7 work on, and it is a challenge.

8 COMMITTEE MEMBER PADILLA: And your response, you
9 know, leads me to a -- it's a different question, which
10 is -- the example I gave you was English language
11 proficiency. But you pointed out a difference between --
12 in earlier grades there's that preapproved textbook list,
13 in the later grades there's not.

14 MR. NUÑEZ: Right.

15 COMMITTEE MEMBER PADILLA: You seem to have much
16 more of a structure in the earlier grades versus -- now,
17 I'm going to ask you the question, if you're an advocate
18 for the structure in the preapproved materials. So if it
19 works for elementary, if it works for parts of middle
20 school, why not at the high school level?

21 MR. NUÑEZ: Well, that's something that the
22 Constitution only gives us the authority to provide
23 textbooks K-8. Hadn't really thought about the issue
24 about the structure for high schools. I think that high
25 schools are a high priority. Jack has been making and

1 talking about high school reform for the last couple of
2 years. This California Teachers Association has put
3 together a work group to look at high school reform
4 issues. And this may be one of those things we have to
5 talk about is maybe there needs to be more structure.

6 The most structure that we have is identifying
7 the courses, you know, algebra, biology, the English
8 courses. But when it comes to the kind of structure that
9 you're talking about for the high schools, we have not had
10 that conversation.

11 COMMITTEE MEMBER PADILLA: Well, all I know is
12 that for years I've been hearing about the drop-out
13 rate -- high school drop-out rate, the California high
14 school drop-out rate. When we had a chance to talk last
15 week, we talked about the -- and I know it came up
16 earlier -- differences between NCLB standards and API.
17 You know, one of the reasons you gave for California not
18 being able to benefit from federal flexibility was a lack
19 of the student database.

20 Can you just remind me again the status of that?

21 MR. NUÑEZ: Yes. It looks like the CALPADS
22 system will be in place in '07-'08 -- is that '07-'08? I
23 want to double-check.

24 STATE SUPERINTENDENT OF SCHOOLS O'CONNELL:

25 Hopefully.

1 MR. NUÑEZ: Yes. We're hoping that it's on line
2 '07-'08 that every child will have a number -- an
3 identification number. And the biggest challenge will be
4 the capacity for the state to pay districts to collect the
5 necessary data. And that's an extensive proposition. And
6 last year was \$50 million.

7 COMMITTEE MEMBER PADILLA: Do we know that that
8 has been collected locally and just has to be entered into
9 the statewide database or the software bridge or
10 something?

11 MR. NUÑEZ: I'm sorry?

12 COMMITTEE MEMBER PADILLA: The data that needs to
13 be collected, has that been collected at the local level,
14 just not shared with the state?

15 MR. NUÑEZ: Yes.

16 COMMITTEE MEMBER PADILLA: Or is it not being
17 collected --

18 MR. NUÑEZ: No, no, it -- we started with a CSIS
19 system that was sort of a pilot program. And many
20 districts got the program in place. They're collecting
21 the data. And now it's a matter of in CALPADS having the
22 data collected and having it transmitted appropriately to
23 California. So there's some people who will have to have
24 that function in local school districts to make sure that
25 the data is being properly keyed in and properly

1 disseminated -- you know, forwarded to the state.

2 COMMITTEE MEMBER PADILLA: So assuming that we
3 switch the light on next year -- you said 2007 -- or this
4 year --

5 MR. NUÑEZ: Yes.

6 COMMITTEE MEMBER PADILLA: -- will that give us
7 finally the true drop-out rate information that we've been
8 waiting for?

9 MR. NUÑEZ: Yes, when we -- if we get the, you
10 know, bad data in, bad data out, you know, that -- that if
11 we get good data from districts, the answer is yes, in
12 three, four years when we start tracking this year, we
13 will be able to give more accurate data about drop-out
14 rate, yes.

15 COMMITTEE MEMBER PADILLA: So not year one but
16 year --

17 MR. NUÑEZ: Right, because year one will just --
18 you know, there's nothing to compare it to.

19 COMMITTEE MEMBER PADILLA: At the end of my first
20 term?

21 (Laughter.)

22 STATE SUPERINTENDENT OF SCHOOLS O'CONNELL: Well,
23 we have known that freshmen, how many are around as a
24 senior.

25 COMMITTEE MEMBER PADILLA: Well, that's what I'm

1 asking, if data has been collected in previous years,
2 because --

3 MR. NUÑEZ: It hasn't been collected by the
4 state.

5 COMMITTEE MEMBER PADILLA: -- it hasn't been
6 taken for two to three, four years going back. You know,
7 we can do some instant analysis.

8 MR. NUÑEZ: It has not been collected by the
9 state.

10 COMMITTEE MEMBER PADILLA: And from a session
11 that I attended actually with you talking about not just
12 the student system or for a database statewide, but the
13 next step, which is the teacher tracking system, status or
14 comment on that?

15 MR. NUÑEZ: Well, the California Teachers
16 Association was at the table when that was being
17 negotiated. I was assigned by the Governor last year, and
18 they're moving forward and implementing that.

19 And do we know a date when that's supposed be to
20 in place?

21 STATE SUPERINTENDENT OF SCHOOLS O'CONNELL: I
22 don't know.

23 MR. NUÑEZ: Does anybody know?

24 But we're moving forward. The law was passed.

25 Look at all these lobbyists in the room and --

1 (Laughter.)

2 MR. NUÑEZ: Anyway, it was passed last year
3 and -- we had a lot of help, huh? I stumped the band.
4 We'll get you the date. But it's in place, the law was
5 passed, and we'll have the system in place.

6 COMMITTEE MEMBER PADILLA: Thank you.

7 CHAIRMAN PERATA: You know, one of the things
8 just on that point. You know, kids all have a shelf life.
9 And the problem is when you're talking about four years,
10 you know, that's almost tantamount to surrendering. And
11 it's -- frankly, I wouldn't -- and I say this
12 respectfully, I wouldn't want to go and have to campaign
13 to anybody that the way we're improving this is going to
14 take four years, we're collecting data. You know, I
15 just -- that's a firing squad.

16 MR. NUÑEZ: Gotcha.

17 CHAIRMAN PERATA: So, you know, of all the things
18 that -- you know, we set standards. And, you know, there
19 was a time when I -- I grew up a Catholic. And it used to
20 be a very practical thing that you did, you'd go by the
21 church and you make the sign of the cross. I never got
22 that confused with salvation. It was just the symbolic
23 gesture.

24 And I never believed in setting standards is the
25 end of the discussion. And, you know -- for two reasons.

1 But the most obvious reason is that we set the standards,
2 then we can't figure out how to get to them. I ask the
3 most important job you got. And The real test to me of
4 the effectiveness of our system is not how people score,
5 but those kids that aren't even bothering to shoot.

6 So we're going to have other members come in
7 here. And that's going to be a recurring theme of mine.
8 I know we've got, you know, an adequacy study coming back.
9 And I have -- at this point in my political career, I have
10 so many questions about, how does public education weather
11 the future? And I think the burden is on us -- those of
12 us that believe in the system, and a lot of us have been
13 knee jerking believing that there's too much -- the
14 preponderance of evidence today that public schools are a
15 failure, it puts the burden on us.

16 And there are a lot of people out there -- I
17 think "No Child Left Behind" was designed to break the
18 system. And I know some of the people -- I've got great
19 respect for some of the people that supported it. But I
20 think the final analysis, that was the goal.

21 So it's incumbent upon those of us who sort of
22 carry the believe to practice it and then be smart enough
23 to figure out how we do things. Don't stand on ceremony,
24 don't stand on tradition, because none of those damn
25 things have surfaced.

1 So that's -- you know, I'm done now, sermon's
2 over. But I just -- I really see you, Joe, as our
3 advocate. We have simpatico. And it's just based upon
4 our careers, you know, even though your lobbyists don't
5 seem to know much --

6 (Laughter.)

7 CHAIRMAN PERATA: Yeah, I just want to see if
8 you're paying attention.

9 (Laughter.)

10 MR. NUÑEZ: You mean that one from Oakland?

11 (Laughter.)

12 CHAIRMAN PERATA: Yeah, that one.

13 But it's important -- I think it's very
14 important, I know it's important, have you push hard on
15 things. And it seems to me that the drop-out rate becomes
16 both the symbol and the reality of where we are today.

17 So, you know, and thank you for doing what you're
18 doing. But we need to be very aggressive at every level.

19 I don't know if other -- Bob.

20 COMMITTEE MEMBER DUTTON: I do have --

21 CHAIRMAN PERATA: We need a non-rural comment.

22 (Laughter.)

23 COMMITTEE MEMBER DUTTON: Yeah, I'm a quick
24 study.

25 (Laughter.)

1 COMMITTEE MEMBER DUTTON: I have just a couple of
2 minor -- or couple of, yeah, minor questions, but just a
3 couple of clarifications.

4 Currently you're a high ranking executive with
5 the California Teachers Association. Have you found that
6 to be -- have you ever found yourself to be in conflict
7 with a CTA position and what you feel as a Board member of
8 the State Board of Education? Keeping in mind that you're
9 a public member of the Board of Education, you're not
10 there necessarily as a teacher or a representative of that
11 organization. So I'm just curious how you dealt with what
12 you would see as conflicts.

13 MR. NUÑEZ: The answer is yes. And very seldom.
14 But when that happens, we have very direct conversations
15 about the issue at hand. And --

16 COMMITTEE MEMBER PADILLA: Who's we?

17 MR. NUÑEZ: With Board members -- with my fellow
18 Board members I have very direct conversations with the
19 issues at hand. And --

20 COMMITTEE MEMBER DUTTON: You said with --

21 MR. NUÑEZ: With -- we're sitting here with the
22 State Board of Education. And I say, "You know, this is
23 in conflict." And I've been in a place where I've had to
24 recuse myself. Not very often. It's --

25 COMMITTEE MEMBER DUTTON: So you would tend to

1 recuse yourself as opposed to taking a position in
2 opposition to the CTA?

3 MR. NUÑEZ: I would have to go back and look to
4 see. I don't remember specifically if I've taken
5 positions in opposition or for. I mean it's -- generally
6 the work at the State Board we're doing has to do with
7 standards, accountability, testing. And the California
8 Teachers Association has pretty much -- has endorsed the
9 standards system and, you know, we're on the same page
10 with all that work.

11 COMMITTEE MEMBER DUTTON: So CTA's never been in
12 opposition with the State Board of Education?

13 MR. NUÑEZ: Oh, of course, of course.

14 COMMITTEE MEMBER DUTTON: And have you found that
15 you're able to -- as a public member of the Board of
16 Education, have you been able to express an opinion
17 different than the CTA, or have you found yourself bound
18 by your position with the CTA?

19 MR. NUÑEZ: I've found myself I think speaking
20 what I believe. I have been -- I find myself speaking
21 what I believe, yes.

22 COMMITTEE MEMBER DUTTON: And then the other area
23 I have a little -- what you and I discussed have a passion
24 for what I used to refer to as industrial arts, now is
25 career technical programs and so forth. Would you share

1 your views on that please.

2 MR. NUÑEZ: Oh, absolutely. As I told you, I
3 taught high school agriculture education. I was a voc ed
4 teacher -- that's what we called ourselves at the time --
5 for 20 years, and saw just a place -- career technical
6 education's a place where students find a reason for
7 staying in school. And so that's just something that we
8 need to -- I'm actually very pleased with the Governor's
9 focus on career technical education. As I told you, one
10 of the things that we always have to be concerned about is
11 the issue of tracking. Poor minority parents sometimes
12 are concerned that voc tech or career tech are places
13 where kids are dumped. And we need to make sure that that
14 is not going to happen and that salable skills are
15 actually provided and that students have an option that
16 they can use to get good jobs.

17 COMMITTEE MEMBER DUTTON: Okay. Thank you.

18 CHAIRMAN PERATA: We have a Senator here,
19 Ducheny, who would like to talk on -- representing the
20 Latino caucus or is it just you?

21 SENATOR DUCHENY: Senator Cedillo for Vice Chair.

22 CHAIRMAN PERATA: So you're just here as Senator
23 Ducheny.

24 SENATOR DUCHENY: Yeah, I think so. I think I'm
25 representing Senator Escutia, but she's not here.

1 I thank you for the opportunity. I just wanted
2 to -- and having listened to the members' questions, I
3 think some of the concerns that I think I and some others
4 of our caucus, and particularly members of the Latino
5 caucus, have had over the last few years have been raised
6 in some fashion. And we certainly appreciate the fact
7 that -- and I think Mr. Dutton's questions were good on
8 this, how do you see yourself?

9 And I think the point I wanted to make today in
10 part is really using this opportunity of somebody on the
11 State Board -- we've had a couple, three or four fairly
12 long controversial hearings on State Board people over the
13 last year. We have found ourselves in the position where
14 the Legislature feels that the State Board should not have
15 funding for its own staff, partly because of this
16 relationship that has built with the State Board over a
17 long period of time. And it is issues like Option 6 which
18 I want to speak to briefly.

19 But I think the larger question we need to be
20 asking some of these folks -- and Mr. Nuñez is just here
21 today, and I think -- but some of this is a larger
22 question. What is the relationship of the Board to the
23 Department, to individual districts, and what's their
24 responsibility to individual students and teachers and
25 what is their responsibility to enact or to implement

1 legislative policy? And is there a -- and I think over
2 time -- and this is a legitimate question for all of us to
3 engage, but Board members ought to be part of it, you
4 know, who are they and what should they be doing? Because
5 I think that's where we're coming into conflict.

6 And the earlier discussions a year ago, many of
7 you were sitting here when we had a rather lengthy
8 struggle, because we had a Board member who did not
9 believe that the policies of the Legislature were things
10 that the Board needed to follow. And so the question of
11 philosophy of -- you know, we can have a legitimate
12 disagreement. Mr. Nuñez and I will probably disagree on
13 his evaluation of Option 6 and whether the standards
14 align, or whether it is possible to create something like
15 that that is standards aligned.

16 Our proposal at least from Senator Escutia's bill
17 that tried to follow on that discussion last year was in
18 fact that those materials should be standards aligned. It
19 was not an intention to lower the standards, but it was an
20 opportunity -- and the desire I think all of us have is to
21 give the opportunity for English language learners to in
22 fact accelerate while they are learning English, to not
23 get behind. I think Senator Padilla's point about the
24 kids who come in late, they already know the math, they've
25 got to learn English and you're going to put them

1 backwards for awhile while you teach them English, and
2 they lose the math and the history and the science in the
3 process. That doesn't make any sense.

4 And the idea at least that I think people had
5 last year was that we ought to be able to have a
6 curriculum and integrate English language learning with
7 standards-based learning in English language arts and
8 other things for somebody who is approaching school with a
9 language other than English. Which is a large number of
10 our students, over 25 percent of the whole state. You
11 know, 50 percent of the districts have more than 50
12 percent of its kids who are English language learners.
13 And in this state of all has to be able to struggle with
14 how to do that teaching best.

15 And whether one size fits all or one curriculum,
16 having standards doesn't necessarily I think mean that you
17 have to have only one way of doing it. And I think the
18 struggle over Option 6 had a lot to do with that.

19 Are there multiple ways that different teachers
20 and different classrooms and different settings might find
21 that an individual student learns better with different
22 materials? And I think -- you know, I think most of us
23 when we go to the classrooms that we see -- where we see
24 good learning going on, when we see positive things, a lot
25 of it is can we address the student at where that

1 student's at, without losing standards, without lowering
2 those standards, as people fear, but in fact be able to
3 say, "You know, Alex learns different than Gilbert does."
4 And there's got to be a way that we can acknowledge that,
5 and say, "Maybe we need different kinds of materials.
6 Maybe I need a different teaching strategy to teach a
7 different child."

8 And I only say that because I think this Board --
9 if anything, we ought to start redesigning this
10 relationship with the Board. You're the first one this
11 year, so we get to talk about it here.

12 But I think the question of what the Board does
13 to have those conversations and to help us do those things
14 rather than acting as a block. And Senator Ashburn and I
15 struggled with a previous board -- and I don't recall if
16 Mr. Nuñez was on the Board at the time -- you know, the
17 reading first money that, you know, there was this big
18 struggle with the Board over whether reading first money
19 could be utilized in schools for children with English
20 language learners.

21 Then there was a big struggle over whether
22 charter schools could teach adults. Adult education is
23 another issue that seems to fall by the wayside often with
24 this Board.

25 And, you know, how we -- asking at least our

1 folks as they come to the center for confirmation how they
2 view that relationship, how do we change that dynamic so
3 that we're not constantly passing resolutions trying to
4 overrule a board that we think the Constitution says is
5 supposed to implement policies passed by the Legislature,
6 not pass independent policies.

7 And I know there's a lot of new members on the
8 board and I know it's changing and there's dynamics. And
9 I know, you know, Mr. Nuñez has been there now five years.
10 And I would hope -- you know, I hear people talking about
11 new kinds of dynamics and relationships. But it's been
12 five years and we haven't seen that. And so how we go
13 about doing that I think is a concern that some of us
14 have. And being the person that's here today, I came to
15 be the one to say it.

16 So thank you very much, Mr. Chair.

17 CHAIRMAN PERATA: Thank you.

18 MR. NUÑEZ: Thanks, Senator.

19 CHAIRMAN PERATA: Anyone else in support?

20 Please come forward.

21 MS. EASTERLING: Lori Easterling on behalf of the
22 California Teachers Association.

23 Our President Barbara Kerr, our Vice President
24 David Sanchez, and our Secretary-Treasurer Dean Vogel and
25 the CTA Board of Directors strongly support Joe Nuñez for

1 reconfirmation. We believe him to be a strong advocate
2 for public school children and for public schools.

3 And just on a more somber note. I'm so sorry
4 about Notre Dame yesterday, and you seem very serious
5 today. So just wanted to let you know that we feel your
6 pain.

7 (Laughter.)

8 CHAIRMAN PERATA: Being a catholic ain't what it
9 used to be.

10 (Laughter.)

11 MR. JONES: Senators, Fred Jones representing the
12 California Business Education Association. Grateful for
13 Senator Dutton bringing up career technical education.

14 CHAIRMAN PERATA: Is this another name for it,
15 business education? I wrote down four iterations now. It
16 went from voc ed, industrial arts. I mean is this --

17 MR. JONES: Well, actually I represent business
18 educators. That's a sector --

19 CHAIRMAN PERATA: You educate business? What --

20 MR. JONES: -- with business management, finance
21 insurance. These are our business sectors. There's ag
22 teachers, there's industrial tech teachers, home ec
23 teachers.

24 MR. NUÑEZ: My homies.

25 (Laughter.)

1 MR. JONES: And -- no, we support Mr. Nuñez's
2 confirmation. He brings an actual career technical
3 education background to the table. And we want to see
4 career technical education be a central role, not just an
5 option, but a central role in our middle and secondary
6 schools to connect education with career life goals. And
7 we believe Mr. Nuñez has that vision. So we would support
8 him.

9 CHAIRMAN PERATA: Thank you.

10 MR. JONES: Thank you.

11 MR. NUÑEZ: Thank you.

12 MS. GRIFFITH: Good afternoon. Sherry Griffith
13 with the Association of California School Administrators.
14 We represent over 16,000 district superintendents, school
15 principals, and other educators both at the district and
16 local sites.

17 We are very pleased to request the confirmation
18 of Joe Nuñez. We've had the privilege of working with Joe
19 on the State Board for the last four plus years. And I
20 have to tell you the benefit that this Governor's provided
21 is that he's appointed more education practitioners along
22 with Joe's expertise than we've ever seen on the State
23 Board. And we do see change occurring.

24 We need Joe on the Board because of his history
25 and because of his connections to the Legislature as well

1 as to the Board. And the reason for that is, many of you
2 are working on the inception of legislation, but it's
3 really at the Board level where we see the implementation
4 and the level of detail that it takes to really put this
5 out to our members in the field.

6 We want to share with you one major role of the
7 Board that Joe has been a champion of, is flexibility for
8 districts. About a half a day is spent at every Board
9 meeting going over waivers that school districts and
10 schools ask for to be relieved of the burden of some of
11 the education codes. And Joe has been a champion for
12 district management and for school sites to have that
13 flexibility just as we provide for charters and others.
14 And so we very much appreciate that role he's played.

15 And, finally, Joe came in to the Board when we
16 were right in the midst of developing the final stages of
17 our accountability system. And that stage was very
18 challenging. We had to put into place textbooks, final
19 assessments based on our standards, and instructional
20 training for our teachers to those standards. And Joe has
21 been a part of that with teacher training.

22 There's another big hurdle that we face this next
23 year, and that is the implementation of teacher training
24 that was reauthorized by Senator Alquist, and really
25 championed by Senator Martha Escutia, which is teacher

1 training that goes beyond the traditional training but
2 includes training for teachers of English learners. And
3 that's a whole new piece where we need ground level
4 experts like Joe, who's been a teacher, to work with us to
5 implement that important next phase.

6 So with that, we're very pleased to support his
7 confirmation.

8 CHAIRMAN PERATA: Thank you.

9 Anyone else?

10 Anyone who'd like to speak in opposition?

11 Seeing none.

12 Further questions from the Board?

13 COMMITTEE MEMBER CEDILLO: I was just wandering
14 back to the beginning about this tracking of dropouts.
15 And I mean it just occurs to me our -- our goal here
16 was -- what's the goal here on tracking of the dropouts?

17 MR. NUÑEZ: The goal is to be able to more
18 specifically identify who they are -- to be able to get
19 demographic data about them, where they are, who they are.
20 And having that data, then we will be able to do some
21 targeted resource -- you know, we'll be able to say,
22 "They're 17 years old and they are mostly in urban areas.
23 What kind of program can we put in place to assist those
24 kinds of kids?" or "They're 15, 16 years old and they're
25 mostly in rural areas. How do we provide assistance to

1 school districts or strategies that we can help districts
2 share among themselves?"

3 COMMITTEE MEMBER CEDILLO: Well, it --

4 VICE CHAIRMAN ASHBURN: Well, I think any
5 community -- I mean I'm amazed by that answer. Every
6 school person that I know knows the demographic of people
7 who drop out. Every police officer, every probation
8 officer, every school official understands who it is that
9 isn't making it through our schools. So if that's the
10 purpose of waiting for four years to get data, you have
11 gained absolutely nothing. And I'm just --

12 COMMITTEE MEMBER CEDILLO: Well, I was going to
13 ask you -- my question is: Then how does that impact --
14 or how do you use that data to address questions of class
15 size, poverty, immigration status, stability -- right? --
16 health care, nutrition, language, single parent household?
17 I mean what's -- I think Roy -- what's the nexus here?
18 Why are we waiting four years? Because it appears to
19 me -- and class size funding.

20 MR. NUÑEZ: One of the things that we've done
21 that's --

22 COMMITTEE MEMBER CEDILLO: How will that data
23 give you more information to address those questions and I
24 guess strategies that require resources to address those
25 questions? Because you could ask any -- add parent and

1 add parent and add social worker, and I think we get the
2 answer to all those questions.

3 MR. NUÑEZ: The challenge for us is statewide
4 policy --

5 COMMITTEE MEMBER CEDILLO: Ask the students.

6 MR. NUÑEZ: The challenge for us is on a
7 statewide policy level. How do we get the data to make
8 policy decisions for the State of California so that we do
9 adequate resource allocation where it's needed? That's
10 number 1.

11 The second thing is that we've actually made some
12 progress this year through 1133 with the \$2.6 billion that
13 we are focusing on decile 1 and 2 schools to try to
14 address the issues that you just enumerated. And
15 hopefully elementary schools are going to get \$500 a
16 child, middle school kids are going to get -- middle
17 school schools are going to get \$900 per child, high
18 schools are going to get a thousand dollars per child to
19 try to find out what we can do to assist those schools at
20 a school-wide level to work on these challenges that you
21 just listed.

22 So there is hope. We have some programs there.
23 High risk for all of us; because obviously if we find at
24 the end of the seven years that we didn't do a very good
25 job, shame on us. But we do have this program in place.

1 Hopefully it will be a program that will show success so
2 that we continue to bring extra dollars to the most needed
3 kids in California.

4 COMMITTEE MEMBER CEDILLO: How does that relate
5 to strategies for putting California number 1 in funding
6 as we were in the past?

7 MR. NUÑEZ: I'm hoping that it relates in the way
8 that it will -- two ways: One is that we have these
9 adequacy studies that are going to be coming out, and that
10 will help inform the debate about funding in California.
11 And, secondly, we have stepped to the plate to say that
12 some kids do require more funding than other kids. And
13 this is the kind of results that we get out of that. And
14 it will help -- it will continue that very rigorous debate
15 about funding for children -- poor children, English
16 learners, those in decile 1 and 2 that need the extra
17 funding.

18 COMMITTEE MEMBER CEDILLO: I think doing
19 comparatives from other states and other best practices in
20 other states particularly as it relates to -- I mean who's
21 number 1 in class size or funding for people in the nation
22 and what are --

23 MR. NUÑEZ: Yes, we do that now.

24 COMMITTEE MEMBER CEDILLO: -- how do they
25 relate -- what apples to apples comparisons are being had

1 there?

2 MR. NUÑEZ: That data is available, and I don't
3 have it right here. But if you would like to have us get
4 you that data, the comparisons about nationwide class
5 size -- there's so much data available now, it's amazing.
6 So you could get buried under the studies and the data
7 runs and the -- there's a tremendous -- there's so much
8 data available in all of these areas that you really have
9 to be very specific, well, what is the question you're
10 trying to answer, so that you don't get too confused by
11 the available data. But there is lots of data available.

12 COMMITTEE MEMBER CEDILLO: Are you guys using
13 that for comparisons and for --

14 MR. NUÑEZ: We use all the data available when we
15 have our conversations.

16 VICE CHAIRMAN ASHBURN: Mr. President, please.

17 I think I heard Jack O'Connell, my very dear
18 friend, say that you're the longest tenured member
19 currently serving on the State Board of Education. And
20 we've discussed some of the issues here today. I want to
21 associate myself with the comments of Senator Perata about
22 kids and the large number of kids who aren't learning.
23 And, you know, it's -- and the fact that the public
24 understands that and is very, very concerned about it.

25 And, you know, we had the Mayor of Los Angeles

1 here last year saying that it was an emergency condition
2 in his city, and he wanted extraordinary things done. And
3 I supported that.

4 So I want to know to what extent -- if education
5 is that important and you've been there that long, what
6 personal responsibility you feel to the state of the
7 schools today?

8 MR. NUÑEZ: I'm really glad you asked me that
9 question, because I actually feel very proud of the work
10 that we've been doing in the State of California.

11 One of the challenges that the State Board have,
12 and those of us who are doing this work every day have, is
13 telling the story about the successes that are going on in
14 this state. With all due respect to the Mayor of L.A.,
15 Los Angeles Unified School District and elementary schools
16 are a shining star in this nation. The superintendent
17 that just retired, left having done a terrific job in
18 turning those elementary schools around. We -- first
19 children that are English learners that are moved out, we
20 find that they are actually showing progress above
21 English-only children. And our problem has been is that
22 we haven't done a very good job of telling that story.

23 As I told you when we met, the Legislature did
24 the heavy lifting of putting the standards in place, of
25 putting accountability in place, of putting the testing

1 aligned to the standards, for passing the professional
2 development for teachers aligned to the standards. And
3 every day teachers are working really hard to teach to the
4 standards, to use standards-aligned materials, to do the
5 professional development required, to change their
6 practice so that by the end of first grade the
7 requirements that the state have put in place for what a
8 child is supposed to know and be able to do, that that
9 happens for those children.

10 And we have been doing a dismal job of sharing
11 the success stories that have been going on statewide.

12 There are absolutely challenges ahead of us, a
13 lot of hard work that has to be done. But I'm here
14 sitting very proudly to tell you that the amount of work
15 that teachers and districts in this state have done to
16 implement standards has been heroic. And that other
17 states have been coming to California to say, 'How did you
18 do that? How did you get this system in place? You're
19 doing a great job.' And they're going back and sharing
20 what we're doing in other states.

21 So I appreciate your point of view and
22 perspective, and agree to the extent that we have not done
23 a very good job of sharing our successes and sharing the
24 data that shows the kind of success that teachers are
25 having. Let me give you one example.

1 When we started the accountability system decile
2 1 schools were all averaging about 435 API points.
3 Currently, decile 1 schools are averaging about 650 API
4 points. And so that -- the whole system has shifted to
5 the right and people are making progress. And we just are
6 not doing a very good job of sharing that data and talking
7 about the successes that our local schools and teachers
8 are having.

9 VICE CHAIRMAN ASHBURN: So your answer is that
10 the public relations is not good?

11 MR. NUÑEZ: Well, certainly we have not been
12 doing a very job of sharing the successes that we have.

13 VICE CHAIRMAN ASHBURN: I mean that's what the
14 whole answer was about, that the public relations
15 communications of all the successes is a failure, and so
16 therefore everything else is okay underneath that.

17 MR. NUÑEZ: With all due respect, I said that we
18 have many problems and challenges that we have to work on.
19 But there are terrific things going on in schools up and
20 down this state. And we've seen terrific progress over
21 time. And we need to continue on the progress and we need
22 to continue to attack the problems that are presented to
23 us: The drop-out rate, the English learners, the
24 achievement gap, the issues of high schools, trying to get
25 our hands around the issues in high schools that are

1 presented to us. We have many challenges. I --

2 VICE CHAIRMAN ASHBURN: But on the drop-out rate,
3 which Senator Perata raised to a high level here, your
4 answer is "Well, we're going to take four years to collect
5 data." And so, you know, I don't know that that's going
6 to help those students that didn't learn.

7 MR. NUÑEZ: The other thing that we're doing is
8 we also have strategies -- and the Legislature passed a
9 law that school districts for students that didn't pass a
10 high school exit exam would be getting dollars per student
11 to assist them to pass the high school exit exam.

12 VICE CHAIRMAN ASHBURN: Yeah, I heard that.

13 MR. NUÑEZ: And so what we're doing is there are
14 strategies in place to attempt to assist those children --

15 VICE CHAIRMAN ASHBURN: What if they're not in
16 class? What if they -- you know, what if they'd given up?

17 I mean throwing more dollars at it, which seems
18 be the answer that you've given to most of, either we're
19 going to study it or we're going to put more dollars on
20 it -- those are the answers you've given today.

21 And, by the way, I can't recall any hearing where
22 the person for confirmation has relied more heavily on
23 people sitting in the audience for their answers than what
24 you've demonstrated today. I mean I thought you were here
25 for confirmation, not the staff or the CTA, not the State

1 Superintendent.

2 "No Child Left Behind." When have you -- what
3 have you done as a member of the State Board to raise
4 concerns about "No Child Left Behind"? And have you ever
5 supported a position seeking a waiver for California?

6 MR. NUÑEZ: Every meeting the NCLB issue is on
7 our agenda at the State Board. And so every single
8 meeting we have the opportunity to discuss and to review
9 California's position on the regulations that are before
10 us. And so every single meeting that we have I have
11 voiced my opinion about NCLB and some of the challenges --

12 VICE CHAIRMAN ASHBURN: Have you ever proposed a
13 waiver?

14 MR. NUÑEZ: The Superintendent and our Chair --

15 VICE CHAIRMAN ASHBURN: Have you -- the
16 Superintendent's not here for confirmation.

17 MR. NUÑEZ: I understand --

18 VICE CHAIRMAN ASHBURN: Voters confirm him.

19 MR. NUÑEZ: I understand that.

20 And, yes -- the answer is yes, I have --

21 VICE CHAIRMAN ASHBURN: Have you voted --

22 MR. NUÑEZ: -- I have voted to support waivers
23 that have been requested of the federal government. And
24 those waivers were presented through the Chair of the
25 Board and through the Superintendent in meetings in

1 Washington DC. And there were a number of issues in which
2 we have made requests for waivers.

3 VICE CHAIRMAN ASHBURN: And what is the outcome
4 of the waiver request?

5 MR. NUÑEZ: Some of them have been successful and
6 most of them have not.

7 VICE CHAIRMAN ASHBURN: The issue was raised
8 about -- which is the very obvious question -- that you
9 are a very high ranking official within the organization.
10 That's who you are. And you answered Senator Dutton's
11 question both ways with respect to your sense of
12 responsibility to vote either the CTA position or your
13 position. And, you know, in response you said yes, which
14 I think means that you -- you know, it was unclear to me.
15 So give me some examples of your votes that have been in
16 opposition to CTA-adopted positions.

17 MR. NUÑEZ: That's a good question.

18 VICE CHAIRMAN ASHBURN: I would expect that you
19 would know that very clearly.

20 MR. NUÑEZ: Well it's not something that is
21 present -- the best way that I could answer that is to
22 tell you that the work that we're charged with at the
23 State Board in implementing the accountability system --

24 VICE CHAIRMAN ASHBURN: I understand that answer.
25 You gave that answer previously.

1 MR. NUÑEZ: I can't --

2 VICE CHAIRMAN ASHBURN: I asked you to give
3 examples of CTA-adopted positions with which you have
4 disagreed and actually voted contrary to.

5 MR. NUÑEZ: Senator, none come to mind.

6 VICE CHAIRMAN ASHBURN: When you take a look at
7 the State Board of Education and the authority of the
8 Legislature in establishing the Board, it specifies 11
9 members, and 10 of them -- and it's specific in the
10 code -- are public members, and one is to be a student
11 member.

12 Now, do you believe that your position as a high
13 ranking official for an organization that is intimately
14 involved in the subject matter qualifies you as a public
15 member of the Board?

16 MR. NUÑEZ: Yes, sir.

17 VICE CHAIRMAN ASHBURN: In almost -- in so many
18 other instances in boards and commissions established in
19 state government there is a specified position -- a number
20 of specified positions, public members, members
21 representing active employees, members representing
22 retired employees, members representing labor. In the
23 State Board, that's not the case. So I would suggest to
24 you that you are not a public member. You are, in fact,
25 in conflict through the position that you hold, because

1 this code is explicit that there are to be 10 public
2 members, and in very stark difference to all other --
3 many, many other boards where the positions are specified.

4 So you can't tell me the difference. You can't
5 tell me those examples of where your votes and the
6 positions of the people you represent have been in
7 conflict. And it's very obvious on its face that you are
8 not -- you are not qualified because of a code that
9 specifies a public member.

10 MR. NUÑEZ: Well, that question was asked and
11 answered five years ago when I was initially appointed,
12 and it was found not to be in conflict.

13 VICE CHAIRMAN ASHBURN: Thank you, Mr. President.

14 CHAIRMAN PERATA: Thank you.

15 Anything further?

16 COMMITTEE MEMBER CEDILLO: Yeah, just on that,
17 because I'm -- I wanted to do another question.

18 Let's just go back to this question.

19 But you don't have a problem with complying with
20 the law, do you?

21 MR. NUÑEZ: Of course not.

22 COMMITTEE MEMBER CEDILLO: And you don't have a
23 problem with implementing legislation that the Legislature
24 passes, in these questions that Senator Escutia was
25 referring to?

1 MR. NUÑEZ: Absolutely. That's our
2 responsibility.

3 COMMITTEE MEMBER CEDILLO: All right. And
4 this was -- and you understood it's Senator Ducheny who
5 already spoke?

6 MR. NUÑEZ: We had the opportunity to speak
7 yesterday for a good hour. And we had -- I thought had a
8 very good conversation.

9 COMMITTEE MEMBER CEDILLO: All right. Well, you
10 know that in the past we've had issues with members who
11 refused to follow directives of the Legislature in the
12 past?

13 MR. NUÑEZ: Okay.

14 COMMITTEE MEMBER CEDILLO: And we wouldn't
15 confirm them as a result of that. But that's not an issue
16 for you, is it?

17 MR. NUÑEZ: Not to my knowledge.

18 COMMITTEE MEMBER CEDILLO: And then the question
19 of the Code, I mean the Code doesn't preclude public
20 members from being affiliated with other associations; is
21 that correct?

22 MR. NUÑEZ: As I said, when I was first appointed
23 they reviewed that code and I was found to be eligible to
24 serve.

25 COMMITTEE MEMBER CEDILLO: Not in conflict?

1 MR. NUÑEZ: Yes.

2 COMMITTEE MEMBER CEDILLO: All right. How much
3 discussion do you have on the Board around the questions
4 of the changing demographics of California? English
5 language learners, you gave me the numbers -- and Senator
6 Ducheny talked about that -- and the challenges confronted
7 by this state with respect to immigration, immigration
8 status, both of the students and of the parents of these
9 students.

10 MR. NUÑEZ: We have regular conversations about
11 English learners, the challenges, strategies for teachers
12 to teach English learners. We have -- it's regularly
13 agendized. Every meeting that we have we get results from
14 the testing of English learners and the progress or lack
15 thereof that they're making. You know, we have on our
16 agenda regularly information about English learners and
17 the testing of them.

18 COMMITTEE MEMBER CEDILLO: And so when you set
19 uniform standards -- given that all students are not the
20 same, right? A student is a student, but they're
21 different, they come from different households, language
22 backgrounds.

23 MR. NUÑEZ: Right.

24 COMMITTEE MEMBER CEDILLO: So then when you set
25 these uniform standards, part of your discussions is about

1 setting up strategies that will help distinct groups be
2 successful?

3 MR. NUÑEZ: Thank you for asking that question,
4 Senator.

5 This is something -- I was a teacher for 20
6 years. And so one of the things that I know very
7 intimately is that Joe does learn differently from Peter
8 and from Raul and from, you know, other -- and from Mary.

9 And one of the things that I'm proud about in
10 these -- the framework that we put together is that we
11 actually say in the framework that there are different
12 levels of learning and teachers need to be aware of if a
13 child is at the highest level or at the lowest level, and
14 to create strategies that meet the needs of that child.

15 And so we get a little bit -- we get a little bit
16 confused about -- we do have state standards. There is a
17 uniform standard that we have to meet. But the underlying
18 instructional materials that we've put together to get to
19 those standards have different varying levels depending on
20 the needs of the child. And that's where we put the
21 strategies together for the teachers to be able to access
22 strategies to get to a child who is not at the top of the
23 class.

24 So there is some confusion at some point. It
25 would take some time to sit and, you know, show you the

1 textbook materials and the instructions to the teachers to
2 show you that actually there is the ability to
3 individualize instruction for specific children.

4 COMMITTEE MEMBER CEDILLO: And my last area is --
5 the Pro Tem had pointed out that the perception -- because
6 part of the reality is -- perception is we are failing the
7 children of California. Perception is we're not training
8 young people for jobs of the future. That will impact our
9 position in global economy.

10 But I think what's important is not just the
11 snapshot but the trends and the directions. And I'm more
12 familiar -- and I'll be very candid with you -- with where
13 we were in the Los Angeles Unified School District at the
14 beginning of the career of Governor Romer. He had a young
15 man working for him, Fabian Núñez, at the time. But --

16 MR. NUÑEZ: I think I know that guy.

17 COMMITTEE MEMBER CEDILLO: And at the beginning
18 of Governor Romer's tenure and then at the point of his
19 exit. And I was very impressed by his work, passing
20 bonds, building schools, reducing class size, getting
21 children off buses, and the trends that were indicated in
22 the scores. But I found that their challenge was that the
23 perception overwhelmed the circumstance. That you seem to
24 argue or articulate that that was one of the challenges
25 that the School Board had.

1 What strategies, what thoughts do you have in
2 terms of giving us an accurate picture where we are today
3 in educating the children of California and where we're
4 headed for the future?

5 MR. NUÑEZ: Well, I'm hoping that what one of
6 the -- as I said earlier with Senator Perata, one of the
7 challenges that we've had is this issue of two-way
8 communication between the Board and State Legislature.

9 And we need to charge our staff and our Chair and
10 those of us who are here with the job of coming and
11 sharing that data on a regular basis and talking about it
12 and unpacking it and saying, "You know, what does this
13 really look like? What does it mean? Let's challenge
14 each other about, okay, are you excluding any kids? What
15 kids are included? Where are the English learners in
16 this data? Where are the poor kids in this data? Where
17 are the rural kids in this data?" And we need to have
18 more ongoing conversations so that we're all on the same
19 page, at least with regard -- and then obviously people
20 will say, "Well, how was the data put together?" And we
21 could have those conversations. You know, "Who was the
22 researcher? We don't believe that researcher." You know,
23 we'd get into all -- unpacking of the data before us. But
24 there is tons of information. Ed Source is unpacking a
25 lot of it, doing a lot of good work, and others as well.

1 So we just keep doing the good work.

2 CHAIRMAN PERATA: Yes.

3 COMMITTEE MEMBER PADILLA: Thank you, Mr. Chair.

4 Not so much a question, but a comment. And I
5 just want take a minute to say thank you, Senator Ashburn,
6 for his questions just a few minutes ago, both the
7 questions and the tenor of his questions. Because as I
8 sat here, second day on the job, my biggest observation
9 here is that I don't feel you're, Mr. Núñez, either
10 feeling or articulating the same sense of urgency that I
11 hear from my colleagues, both in this room and over the
12 conversations we've had over the last several weeks. And
13 that I think is the biggest frustration.

14 I agree with you. You know, I worked with LAUSD
15 very, very closely. Like Senator Cedillo I applaud
16 Governor Romer for what he did in terms of school
17 construction, for the increasing elementary school
18 performance. That's not only in Los Angeles, but
19 statewide.

20 A quick side note. If we're going to tackle
21 education in the State of California, you can't ignore Los
22 Angeles. It's not being greedy about Los Angeles. It's
23 not about being Los Angeles centric. But when you have
24 the largest school district in the state, the second
25 largest in America, with more than 700,000 K through 12

1 students, you have to improve their significance to have
2 any sense of improvement statewide.

3 That being said, it's great -- and people can get
4 their pat on the back -- up until the 6th grade. But the
5 fact of the matter remains you have the middle school
6 challenges, you have high school challenges. And you've
7 been on the Board for many, many years now. And I just
8 cannot believe that high school challenges, middle school
9 challenges, other challenges have not been on the front
10 burner or high on the radar in all this time.

11 I refuse to believe that for the last five years
12 you've been looking only at elementary school performance,
13 and are proud of that, without feeling some sense of
14 responsibility or urgency for what happens after the 6th
15 grade. And if you're feeling that, that's certainly not
16 coming across. And I think that's why you're seeing
17 senators respond the way we are.

18 And so for, you know, all the due respect that
19 comes with this, you know, I understand we're going to
20 work on it. We're awaiting more statistics, et cetera, et
21 cetera, et cetera. We don't have all the time in the
22 world. Our kids don't have all the time in the world.
23 And that's why we're trying to get to more specifics and a
24 more aggressive performance here from you and the rest of
25 the Board.

1 MR. NUÑEZ: Fair enough.
2 CHAIRMAN PERATA: Do we have a motion?
3 COMMITTEE MEMBER CEDILLO: Move to confirm.
4 CHAIRMAN PERATA: Motion by Senator Cedillo for
5 confirmation.
6 Please call the roll.
7 COMMITTEE SECRETARY WEBB: Cedillo?
8 COMMITTEE MEMBER CEDILLO: Aye.
9 COMMITTEE SECRETARY WEBB: Cedillo, aye.
10 Dutton?
11 COMMITTEE MEMBER DUTTON: No.
12 COMMITTEE SECRETARY WEBB: Dutton, no.
13 Padilla?
14 COMMITTEE MEMBER PADILLA: Aye.
15 COMMITTEE SECRETARY WEBB: Padilla, aye.
16 Ashburn?
17 VICE CHAIRMAN ASHBURN: No.
18 COMMITTEE SECRETARY WEBB: Ashburn, no.
19 Perata?
20 CHAIRMAN PERATA: Aye.
21 COMMITTEE SECRETARY WEBB: Perata, aye.
22 3 to 2.
23 CHAIRMAN PERATA: 3-2. This will go to the floor
24 Thursday of next week.
25 MR. NUÑEZ: Thanks, Senator.

1 Appreciate your time. Thank you very much.
2 Appreciated the conversation.
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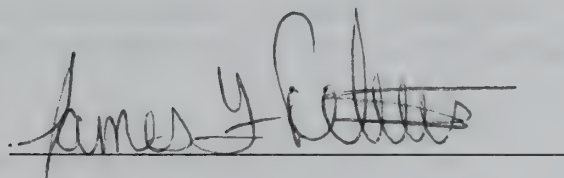
1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing Senate Rules Committee hearing for the State of
7 California was reported in shorthand by me, James F.
8 Peters, a Certified Shorthand Reporter of the State of
9 California, and thereafter transcribed into typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 12th day of January, 2007.

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22 JAMES F. PETERS, CSR, RPR
23 Certified Shorthand Reporter
24 License No. 10063
25

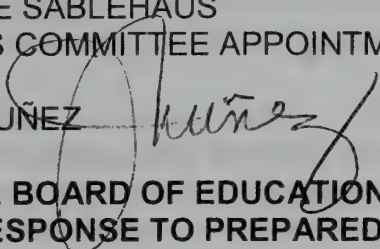
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APPENDIX

DECEMBER 14, 2006

MEMORANDUM

TO: NETTIE SABLEHAUS
RULES COMMITTEE APPOINTMENTS DIRECTOR

FROM: JOE NUÑEZ 

RE: STATE BOARD OF EDUCATION CONFIRMATION
RESPONSE TO PREPARED QUESTIONS

The following are all the responses to the questions forwarded to me on November 27, 2006. I look forward to meeting with you.

1. *From time to time, relations between the State Board and education stakeholders have been tense. What have you done to improve communication and collaboration between the State Board and the Legislature, education organizations, parents and other advocates on significant education policy issues?*

As you are aware, the field of education is blessed with many stakeholders. In all issues during my tenure on the Board, the Board has spent considerable time listening and learning from multiple stakeholders. As a leader of one of the major stakeholders, the California Teachers Association, I have a special stake in ensuring a fair, open and collaborative process.

The decisions by the State Board of Education are made using a public process. In accordance with the Bagley-Keene Open Meeting Act, the Board announces meetings and posts agendas to inform all stakeholders and the public generally of meeting dates, location, and anticipated information and action items. At these regularly scheduled public meetings, SBE considers oral and written comments of educators and members of the public who wish to participate.

To stay informed of important education issues, the needs of local districts and teachers, the latest findings in education research, and to understand all sides and perspectives of issues and actions under consideration, SBE regularly requests public seminars, presentations, and solicits public comment at all meetings. Members of the State Board of Education and SBE staff meet on an individual basis with members of the public, representatives of statewide organizations, districts, and teachers to listen and learn about their issues, concerns, and recommendations. Prior to any changes in administrative regulations, SBE announces and conducts a state wide public review in conformity with the Administrative Procedures Act and holds public hearings to consider facts and opinions offered by the public prior to Board action.

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This past year, the Board has had more staff to conduct outreach and contact stakeholders for various issues. In recent years, a staff shortage has made that impossible. Both the quantity and quality of present staff will make the Board a more visible and accessible body. This will include increased contact with the legislature because you make such a thoughtful and helpful contribution to education.

2. *At the November board meeting two items, one related to the appointment of members of the Curriculum Development Supplemental Materials Commission and the other related to appointments to the Commission on Charter Schools, were rescheduled with almost no notice. At some of the most recent board meetings, there has been difficulty maintaining a quorum, so some agenda items were rescheduled and others were rushed through so some members could meet flight plans. Members of the public who want to participate find it difficult, if not impossible, to do so when plans change so quickly. What is your view of how this problem affects the board's accountability? What steps should be taken to address these issues, if any?*

It is unfortunate that the Board must alter schedules. All changes in schedules must and do conform to state law. In general, I believe the Board has gone out of its way to fully allow all individuals and groups to present their views to the Board. In a state with 35 million people and a field with hundreds of groups and organizations, we could always do a better job. At the November meeting, appointments were taken up on Wednesday, rather than Thursday, because two members who were present on Wednesday had a scheduling conflict that caused their absence on Thursday. To ensure that a quorum would be present and that screening committee members would be on hand to discuss nominations, the appointments were taken up on Wednesday.

In general, the Board has been careful to follow its agenda, but just as legislative committees sometimes must reschedule their hearings, the Board must accommodate circumstances.

3. *Do you support allowing some local discretion in selecting instructional materials at grades 1 to 8? Under what conditions do you believe local involvement would be appropriate?*

State law requires the State Board to adopt at least five programs for each of the four core content areas, unless publishers fail to submit a sufficient number of programs that are standards-aligned and comply with all applicable state laws. A choice among five programs allows districts to use local discretion to determine what best meets their students needs. The Board makes every effort to fulfill the intent of this law; however, the number of publisher submissions and the quality of those submissions determine the number that the Board can adopt. Both California law and the State Board require a broad participation of local teachers and education leaders and other education stakeholders in the review of instructional materials that are recommended for adoption by the Board. As an example, for the past three adoptions—Science, Visual and Performing Arts, and History-Social Science—there were approximately 170 reviewers collectively. For the upcoming Mathematics adoption in 2007, there will be approximately 180 reviewers ready to review math materials this spring.

Districts have always exercised local control in the use of general apportionment money for purchase of instructional materials. The state categorical program for funding instructional materials makes acquisition of standards-aligned materials the first priority. After each student has been provided with current, standards-aligned materials in each of the four core subject areas (Math, Reading/Language Arts, History/Social Science, and Science) categorical funds may be used to buy non-standards-based instructional materials selected by the district. Standards-aligned materials are adopted by the State Board for grades K-8 and by district boards for grades 9-12. The requirement that local districts have standard based materials is not only state law since 1998-99; it was the subject of the William's lawsuit widely supported by the legislature just two years ago.

Table I (attached) lists the state categorical funds for instructional materials for the past 15 years. Prior to 1998-99, the state provided funding for instructional materials only through the Instructional Materials Fund (IMF). Districts were given authority to expend 30% of annual funding for non-state-adopted materials. In 1997-98, about \$44 million of the \$145.9 million were available for other than state-adopted instructional materials. In 1998-99, the Legislature added an additional \$250 million for purchase of new state-adopted instructional materials aligned to the new state core academic content standards. In 1999-2000, the voters of California altered the Lottery Act to reserve one-half of the annual increase in lottery funding for purchase of instructional materials. The first year of this Lottery funding totaled \$37 million and it has now grown to about \$190 million annually or about \$30 per pupil.

Local districts do have latitude to expend state categorical funds for locally selected instructional materials. If a local district has up-to-date, standards-based materials, it may expend all state instructional materials funds for non-standards-aligned books chosen by the districts. The legislature has placed restrictions on the use of categorical money to ensure that all pupils will have access to current, standards-aligned materials. Purchases made with general apportionment funds and lottery money are a matter of local control. However, if state categorical funds do not pay the full cost for purchasing standards-aligned materials, apportionment funds and/or lottery funds must be used to supplement the categorical funds.

4. How can the State Board facilitate local involvement in the textbook adoption process?

I believe there is now substantial local involvement in this process. Both California law and the State Board require a broad participation of local teachers and other education stakeholders in the review of instructional materials that are recommended for adoption by the Board. If the legislature desires to increase local control over purchase of instructional materials, it could eliminate restrictions on the use of categorical funds, or, it could increase the amount of categorical money appropriated and, thereby, reduce the need for districts to supplement categorical funding with general apportionment or lottery revenues.

5. Do you believe that the current role of the Curriculum Commission in recommending policy positions to the State Board on K-12 issues is an appropriate one? What changes would you recommend to ensure fairness and openness in the textbook adoption process, given the concerns raised at recent board meetings over materials for English learners as well as the upcoming history social science adoption?

The current system is fair and open, and provides for a wide diversity of opinion. Just ask publishers how the California adoption process compares with textbook selection in other states. They will confirm that we have an open process as a matter of state law and as a matter of State Board policies and practices.

The debate over how best to provide instructional materials that meet the academic needs of all pupils, including English learners, continues to be vigorous. After consulting experts and advocates from all sides of this issue, the Board made its decision in adopting criteria for the Reading/Language Arts materials.

As a teacher, a Latino, and a union official, I believe these new and expanded Reading/Language Arts criteria will substantially improve the quality of instructional materials and instructional practices for California's 1.5 million English learners. I recognize that some want English learners to have a separate instructional program. I do not support that scheme, and I would note that our nation has always gone off track when we create "separate but equal" academic systems. We have a standards-aligned assessment system. If English learners are not exposed to the same academic content standards and curriculum as other students, we are inviting a lawsuit. English learners must have access to language development and interventions that will help them master our content standards, and the new Reading/Language Arts program does that. But, we cannot assign them to a separate curriculum.

I believe that the current role of the Curriculum Commission in the adoption process is an appropriate one. However, the process for the adoption of textbooks should undergo continual review. The board is now embarked on reviewing the regulations that guide the instructional materials adoption process and the operation of the Commission. I will take very seriously the recommendations for improvements in Commission operations that include greater transparency in the process.

6. *There are a number of reading and English language arts specialists on the Curriculum Commission. However, in the near future, the commission will have several large adoptions before them, including history and social science, science, mathematics, and possibly English language development. Are there sufficient subject matter experts on the commission to cover the various areas? Generally, what is the board doing to ensure that there is a diversity of expertise on the commission?*

The Curriculum Commission has 18 members that reflect California's diversity. It has 13 public members chosen by the State Board, one State Senator and one public member appointed by Senate Rules, one Assembly member and one public member appointed by the Speaker, and one public member appointed by the Governor. The Board's practice has been to have more commissioners with academic training in the adoptions forthcoming. For example, the Science Adoption was made in November

of 2006. Math will be adopted in 2007 and Reading/Language Arts will be adopted in 2008. Thus, Commissioners appointed by the board in November were persons with math and Reading/Language Arts/English Language Development expertise. Two Commissioners with RLA/ELD expertise were termed out on December 31 and in 2007 two more commissioners with RLA/ELD expertise will leave. This will cut the number of Commissioners with RLA/ELD expertise in half. With this in mind and the two upcoming adoptions, the Board made special efforts to appoint one former math teacher and two exceptionally qualified Latino administrators who have had extensive experience in serving the academic needs of English Learners in both Math and Reading/Language Arts/English Language Development.

7. *The state's Reading Language Arts and English Language Development framework is sometimes criticized for having been designed in a manner that does not ensure that a student will achieve sufficient proficiency in English to meet academic standards and pass the California High School Exit Exam. How do you respond to this criticism? What, if any, changes would you recommend to ensure each student has the instructional materials necessary to attain reading and English proficiency?*

I believe that the adopted Reading/Language Arts framework and the criteria for selecting Reading/Language Arts instructional materials will yield an excellent curriculum for increasing the academic attainment of English learners. The State Board provided for increased time on task for English learners, pupils who use African-American Vernacular English, and students with special needs. The selection criteria for instructional materials adopted in 2002 were improved for the 2008 adoption based on research, experience from the field, and expert testimony.

The purpose of the Reading Language Arts Framework (adopted in 1999 and updated in 2006) is to provide a blueprint for organizing instruction so that every child meets or exceeds the English/Language arts content standards. It guides the implementation of the standards by specifying the design of instructional materials, curriculum, instruction, and professional development. State standards identify what to teach at specific grade levels. The framework provides guidelines and selected research-based approaches for implementing instruction to ensure optimal benefits for all students, including those with special needs (e.g. English learners, students with disabilities and reading difficulties, and advanced learners). The framework includes 209 references to English learners and 353 provisions to facilitate universal access for all students, including English learners. (See Attached Packet)

The Reading/Language Arts adoption in 2002 was the first time California required alignment of instructional materials with content standards. Most districts began to implement these new programs during the 2003-04 school year.

While we need to continue our focus on the academic progress of English learners and other students with insufficient academic achievement, test results show encouraging gains made by English learners, especially students who are classified as Redesignated Fluent English Proficient. When research-based reading programs are fully implemented and students are provided with high-quality instruction, English learners can quickly and efficiently increase their level of English proficiency and learn to read. High-performing English learners are then reclassified as R-FEP and are no longer included in the English learner subgroup test scores. The result is that each year the group of non-English learners is augmented by the most skilled readers who were formerly classified as EL, while the EL group receives more students who are at the lowest levels of reading and English language proficiency. Each year about 150,000 students are re-designated as fluent. Each year 150,000 students come to our schools with limited English skills. Thus, EL achievement grows by about 10% even if the average score is the same.

While high quality instructional materials are a critical element of successful educational reform, materials alone are not enough. We must also have support for continued teacher and principal professional development to help teachers deliver the most effective instruction to the diverse student population in California's schools.

8. *What efforts has the State Board taken, or should it be taking, to convince the federal government to implement more California suitable accountability measures?*

Since the implementation of No Child Left Behind, California has worked with the federal government to encourage design of accountability measures and other program elements suited to California's existing accountability system.

The State Board of Education has sought to use California's accountability methodology, the Academic Performance Index (API), to satisfy our federal accountability requirements for Adequate Yearly Progress. California's system was in place prior to adoption of No Child Left Behind. We believe it to be a robust and

accurate means of determining school and district progress on student performance. The API provides a better means of measuring school growth in student performance over time than the federal AYP system, which is a static annual measure. As we look forward to the upcoming year's discussion on reauthorization of No Child Left Behind, California should continue to pursue these changes.

We have also submitted a number of technical changes to the federal government for their approval which give us greater flexibility to use aspects of our current system to satisfy federal requirements. One example of such changes is recent flexibility we've gained to enable certain special education students to use calculators on their statewide exams without being penalized for NCLB purposes.

9. *Do you believe California will be successful in its efforts to have growth models such as California's API deemed acceptable by the federal government? In the event that this fails to occur, how do you propose to address the growing number of schools in program improvement?*

Yes, I ultimately believe that the mounting pressure from California and other growth model states will prevail and flexibility will be granted to states using growth models for accountability. The State Board, CDE and the Secretary for Education have been working with the U.S. Department of Education (ED) in addition to members of Congress on this important issue. The ED has shown some willingness to consider flexibility in this area. They have approved a pilot program for growth models for a maximum of 10 states and have expressed interest in expanding this program over time if it is successful. California was not eligible for this pilot (because we lack a student data system that permits comparisons over time), but the Board and CDE will continue to work with members of Congress as NCLB reauthorization approaches to seek additional flexibility for the inclusion of growth models.

If we are ultimately unsuccessful in gaining additional flexibility to use our growth model, we will need to increase support and technical assistance for the increasing number of schools and districts that fall into Program Improvement because they have repeatedly failed to make Adequate Yearly Progress (AYP). Our School Assistance and Intervention Program that we initially launched for the state's Immediate Intervention and Underperforming Schools Program (IIUSP) has been successful in helping schools shift from stagnant academic achievement to a trajectory of growth. The State Board

can use this model as a first step toward improvement for Program Improvement schools. This approach provides intensive technical support and intervention to help schools implement successful improvement programs. This year, the State Board adopted a similar process for school districts, using District Assistance and Intervention Teams. This process rolls out a similar intensive intervention program focusing on district-wide improvement. This program is currently being piloted at four districts in California. We hope to use the results of this pilot to inform our roll-out of this program for failing districts statewide. For programs that continue to fail to make progress after these intervention programs, the State Board has a number of additional options from which to choose. Thus far, we have chosen a second round of technical support and intervention, while allowing schools to keep their current staff in place instead of more onerous sanctions. However, for three failing schools, Jack O'Connell has elected to substitute the current administrator with a state-selected trustee, where the school has been wholly unsuccessful at demonstrating an ability to make progress. Because this process is in its infancy, we are continuing to closely monitor these programs to determine what approaches are most likely to achieve success.

10. What steps are being taken to make certain California meets the NCLB requirements for highly qualified teachers by the designated timeline? How will the revised state plan ensure California's teachers are highly qualified?

The No Child Left Behind Act defines a highly qualified teacher to be an individual who has completed a bachelor's degree, has received an appropriate credential for his or her assignment, and has demonstrated subject matter competence in his or her teaching assignment area. Among the goals of NCLB was the expectation that by the end of June 2006, every core academic subject class would be taught by a highly qualified teacher. Because no state in the union had satisfied the goal by June 2006, ED extended the deadline by one year.

Beginning in 2003, the Board and CDE have been working together to inform local educational agencies about the highly qualified teacher requirements. Regional meetings were held throughout the state and the NCLB Teacher Requirements Guide was circulated widely. A PowerPoint and the Guide are posted on the CDE website.

From the beginning of NCLB, it was clear that certain categories of teachers would have a difficult time achieving compliance because they have multiple-subject-matter assignments at the secondary level. Achieving compliance for them means passing a subject matter examination or completing the equivalent of a college major in each subject area they teach. ED provided flexibility to assist two categories of these teachers: those who teach in small, rural schools, and new secondary special education teachers. Districts that have alternative secondary education settings such as court schools, community schools, and continuation schools are still faced with the challenge of ensuring their teachers of multiple-subject classes are highly qualified.

The SBE and CDE have recommended that districts explore team teaching, using itinerant teachers, and utilizing on-line and distance learning opportunities. These strategies would substantially reduce the burden on self-contained classroom teachers in these settings.

The CDE developed, and the SBE approved, a system to support schools and districts at risk of not meeting the HQT goal. The Compliance, Monitoring, and Intervention System (CMIS) was approved at the January 2006, Board meeting. This system empowers CDE staff to provide differential levels of technical assistance to a district depending upon the district's level of risk of missing the goal. At its November 2006 meeting, the Board approved an action plan that used school level data to identify the schools, districts, and types of teachers having the greatest difficulty in meeting the HQT goals. The most challenging areas are secondary special education, mathematics, science, and elementary special education, in addition to the unique challenges of secondary self-contained classrooms in alternative education settings.

The Action Plan highlighted the recently chaptered legislation to support a more equitable distribution of highly qualified teachers (SB 1209), to encourage the use of mentors for teachers in low-performing schools (SB 1209), to provide principals greater authority in accepting teachers who wish to transfer to a new school (SB1655), and to improve school facilities resulting in safer and higher quality working conditions (SB 550). These measures will substantially improve the state's efforts at ensuring all students have highly qualified teachers who can provide the rigorous instruction required to help students pass the CAHSEE and demonstrate proficiency in the California Standards Tests.

The Board and its staff will continue to work closely with the CDE, DOF, and legislature to ensure the implementation of these programs targets the schools with the lowest percentage of courses taught by highly qualified teachers and fulfill the intent of the legislature.

There was no Question 11 in the Rules Committee letter.

12. *Should alternatives be available to 12th graders who are unable to pass the exit exam? If so, what options should be made available?*

There currently are options available for 12th graders who cannot pass the exit exam. While none of these options provides students with a diploma if they cannot pass the exit exam, they do provide students with additional support and assistance to gain the needed skills to pass the exit exam. These options include funding for intensive, individualized remediation in content areas in which the student is struggling, allowing the student to continue to enroll and attend school at a comprehensive high school or charter school, enrolling the student in an intensive summer school program, or allowing the student to attend an adult education program. In conjunction with these additional programmatic options, a student who has not passed the exit exam by the end of the 12th grade year can continue to take the exam multiple times via subsequent administrations of the exam.

With regard to special education students, the State Board of Education and the Department of Education are currently researching whether or not additional options should be made available for them to receive a high school diploma. We expect to be in a position to make a recommendation to the legislature by May or June of 2007, regarding whether additional options are viable.

13. *What actions should the State Board take to make certain that local school districts fulfill their obligation to adequately prepare students for the exam?*

The State Board, in conjunction with the legislature, the Governor's administration, and the Department of Education should redouble our efforts to ensure that local school districts are fulfilling their obligation to make certain that all students are receiving the instruction necessary to prepare them for the exit exam and for life after high school. This includes substantial remediation effort at the high school level for those students who are struggling to pass one or more sections of the CAHSEE. We have begun this

effort by focusing funding and remediation on 12th grade students because the consequences are most imminent for those students. We should continue to push these efforts into the 11th and 10th grades as well, increasing after school and summer school remediation. Additionally, and perhaps what is more important, we need to begin to gather data on what middle school programs are effectively preparing students for the CAHSEE in 10th grade. We need better information early in students' educational careers to help ensure they are on track educationally before we find them struggling at the higher grades. The Board, in conjunction with CDE, should undertake a concentrated effort to disseminate best practices to school districts at the middle school level and implement programs proven to demonstrate student success at the higher grades. The Board and CDE, through our compliance monitoring programs, should monitor schools and provide technical assistance to help them put effective programs in place.

14. *What actions has the board taken, or should it take, to determine accurate high school dropout rates? What is your view of the quality of the information available to you currently? What new policies should be considered, if any, to affect improvement in the rates?*

Determining accurate high school dropout rates and selecting the strategies that will effectively reduce these rates is critically important if we are to educate **all** students in California. While the Department is working on a new data system that promises to give an accurate picture of high school dropouts at the district, school, and student levels, we already know that the rate is unacceptably high, with most estimates at about 30% of all ninth graders never receiving their diplomas. At the Board's March meeting, Board staff and the Department will make a full presentation on 1) the available data, 2) programs that have promise in reducing the rate, and 3) strategic options to effectively attack this problem (e.g., focus on students who have already dropped out and/or students who are at risk of leaving school).

If you have any questions or would like to talk further about any of these issues, please contact me at (916) 325-1500.

Table 1

	K-8	9-12	Schiff Bustamante	Library	K-4 Classroom Library	AB 1781	One-Time	Prop 20 Lottery	Total	Per Pupil
1992-93	\$ 104.7	\$ 24.4							\$ 129.1	\$ \$25
1993-94	\$ 103.4	\$ 26.1							\$ 129.5	\$ 25
1994-95	\$ 103.5	\$ 26.1							\$ 129.6	\$ 24
1995-96	\$ 105.7	\$ 27.6							\$ 133.3	\$ 24
1996-97	\$ 111.7	\$ 28.2							\$ 139.9	\$ 27
1997-98	\$ 116.2	\$ 29.7							\$ 145.9	\$ 25
1998-99	\$ 133.1	\$ 39.0	\$ 250.0	\$ 158.5					\$ 580.6	\$ 99
1999-2000	\$ 125.9	\$ 32.1	\$ 250.0	\$ 158.5	\$ 25.0			\$ 37.0	\$ 628.5	\$ 106
2000-01	\$ 131.1	\$ 33.8	\$ 250.0	\$ 158.5	\$ 25.0			\$ 69.4	\$ 667.8	\$ 110
2001-02	\$ 137.0	\$ 35.8	\$ 250.0	\$ 158.5	\$ 25.0			\$ 113.6	\$ 719.9	\$ 117
2002-03				\$ 32.0		\$ 204.5		\$ 82.7	\$ 319.2	\$ 51
2003-04				\$ 20.4		\$ 188.0		\$ 115.0	\$ 323.4	\$ 51
2004-05*				\$ 20.4		\$ 333.0	\$ 168.0	\$ 150.0	\$ 671.4	\$ 106
2005-06						\$ 361.0		\$ 190.0	\$ 551.0	\$ 87
2006-07**						\$ 402.0	\$ 130.0	\$ 190.0	\$ 722.0	\$ 114

Attachment: References English Learners in the Reading/Language Arts Framework

The Reading/Language Arts Framework was developed with careful thought for the success of all students in meeting our academic content standards. This is especially true for the needs of California's 1.6 million students identified as English Learners.

The attached document illustrates many of the explicit references to the needs of English Learners in this Framework. It is divided into two separate but related approaches to meeting the needs of this population.

The highlighted sections in the document set forth the 209 statements that explicitly reference the academic needs of and instructional practices for English Learners and English Language Development. The un-highlighted sections focus on the 353 significant and critical notations for universal access. Universal access means incorporating differentiated instruction and use of appropriate instructional strategies to ensure achievement in reading and language development for *all* students, but especially critical for English Learners.

CITATION EXAMPLES FROM THE READING/LANGUAGE ARTS FRAMEWORK THAT APPLY TO ENGLISH LEARNERS AND ENGLISH LANGUAGE DEVELOPMENT¹

CHAPTER 1: INTRODUCTION TO THE FRAMEWORK

Citation Number	Page Number	English Learner/ All Students/ Differentiated Instruction References	English Language Development /Academic Language References	Reading/Language Arts Framework Text Language:
1	1	EL/All	ELD	The standards designate what to teach at specific grade levels, and this framework provides guidelines and selected research-based approaches for implementing instruction to ensure optimal benefits for all students , including those with special learning needs (e.g., English learners , students who use African American vernacular English, students with learning disabilities and reading difficulties, and advanced learners).
2	5	EL/All	ELD	As educational leaders it is our charge to use that knowledge base responsibly and strategically to ensure that all children educated in California public schools will graduate with the knowledge and skills that that allow them to access and employ the power of the printed word. Toward that end this framework is designed to provide a blueprint for curriculum and instruction to enhance all students' potential as producers and user of language.
3	6	EL/All/Differentiated Instruction	ELD	In an effort to accelerate and sustain all learners' proficiency in the language arts, ten principles are used to guide this framework and address the complexity of the content and context of language arts instruction . The principles direct the purpose, design, delivery, and evaluation of instruction. ... Although more or less emphasis is placed on particular strands, depending upon students' needs at a given time , all strands are to be developed simultaneously.
4	8	EL/All/Differentiated Instruction	ELD	The most effective instructional approach is to prevent reading/language arts problems before they begin. The key to success is to make the first instruction students receive their best instruction Assumes that all learners will work toward the same standards yet recognizes that not all learners will acquire skills and knowledge at the same rate .
5	9	EL	ELD	Address the full range of learners in classrooms , with specific attention being given to language arts instruction and the learning needs of English learners ,...
6	15	EL/All/Differentiated Instruction	ELD	Although all learners work toward mastery of the same standards, curriculum and instruction are differentiated to meet student's needs. Some students may meet more than one of the following descriptions: ... 3. (<i>Questions to ask regarding the content for</i>) Students who are English learners . Is more extensive instruction of vocabulary or other English-language features necessary to achieve the standard? Is the rate of introduction of new information manageable for learners ? Is there sufficient oral and written modeling of new skills and concepts and reinforcement of previously taught information? Have linguistic elements in the lesson or materials been modified

¹ The page numbers currently noted are taken from the February 2006 draft document. If a more current document is used to verify citations the page numbers on the more recent document may be slightly different.

as appropriate for the proficiency level of the students?

CHAPTER 2: GOAL AND KEY COMPONENTS OF EFFECTIVE LANGUAGE ARTS INSTRUCTION

Citation Number	Page Number	English Learner/ All Students/ Differentiated Instruction References	English Language Development/Academic Language References	Reading/Language Arts Framework Text Language:
7	17	EL/All/Differentiated Instruction	ELD	A critical feature of the standards and this framework is that gaps, delays, and deficits in skills and knowledge experienced in previous grades must still be addressed responsively and responsibly.
8	18	EL/All/Differentiated Instruction	ELD	The child's first instruction must employ the most valid and effective methods available to ensure mastery of the skills that lay the foundation for further reading achievement.
9	19	EL/All/Differentiated Instruction	ELD	The best practices of any profession are not gained in a vacuum but are implemented and sustained in environments that support, enhance, and reinforce those practices and include several dimensions.
10	19	EL/All/Differentiated Instruction	ELD	...four components that a balanced, comprehensive approach to reading must contain: ... (3) ongoing diagnosis that informs teaching and assessment that ensures accountability; and (4) a powerful early intervention program that provides individual tutoring for students at risk of failure in reading.
11	19-20	EL/All/Differentiated Instruction	ELD	The key components of an effective language arts program (an expansion of the four elements contained in <i>Every Child a Reader</i> [California Department of Education 1995]) are assessment, instruction, instructional time, instructional programs and materials, instructional grouping and scheduling, differentiated instruction , classroom instructional and management practices, professional development, administrative practices, parent and community involvement, motivation, effort, and academic language .
12	20	EL/All/Differentiated Instruction	ELD	Different types of assessment used at strategic points (before, during, and after instruction) provide information critical to determining what to teach, how much the students are learning, and whether the students have achieved mastery. ... Indicators of critical skills and strategies are used to identify students at risk of difficulty and in need of specialized instruction.
13	21	EL/All/Differentiated Instruction	ELD	High-quality instruction is at the heart of all good language arts programs. A comprehensive, balanced language arts program in which curriculum and instruction are differentiated according to assessed needs should be provided to all students
14	24	EL/All/Differentiated Instruction	ELD	Students with special learning needs are provided additional instructional time and support. Additional time is allocated within the school day, before school, after school, and during vacation periods as necessary. At the secondary level additional courses and opportunities outside the school day and year are provided for students having difficulties with reading.
15	25	EL		Instructional materials for English learners address the same curricular content described in this framework for English speakers and give additional emphasis to the structures and systems of English, including phonology, morphology, syntax, and semantics.
16	25	EL/All/Differentiated Instruction	ELD	• A validated process is used to select both print and electronic instructional materials to promote high levels of achievement for the full array of learners.

Draft: *Reading Language Arts Framework*

References to English learners, English language development, in differentiated instruction/Universal access for all students

December 8, 2006

17	26	EL/All/Differentiated Instruction	ELD	...instructional grouping and scheduling are used to enhance learning opportunities. ... Instruction is provided in flexible groupings to maximize student performance.
18	26	EL/All/Differentiated Instruction	ELD	Tutoring (peer or adult or both) is used judiciously to supplement (not supplant) explicit teacher-delivered instruction. It aligns with classroom objectives and instruction. ... Cross-class or cross-grade grouping is used when appropriate to maximize opportunities to tailor instruction to students' performance levels .
19	27	EL/All/Differentiated Instruction	ELD	All students are expected to meet or exceed the grade-level expectations set forth in the <i>English-Language Arts Content Standards</i> . Differentiated instruction aims to optimize learning opportunities and outcomes for all students by tailoring instruction to meet their current level of knowledge and prerequisite skills.
20	27	EL/Differentiated Instruction	ELD	English learners develop proficiency in English and in the concepts and skills contained in the <i>English-Language Arts Content Standards</i> . Emphasis is placed on (1) instruction in reading and writing; and (2) simultaneous instruction in the acquisition of academic vocabulary and the phonological, morphological, and syntactical structures of English already understood by English speakers.
21	27	EL/Differentiated Instruction	ELD	Teachers adapt instruction for students with multiple needs (e.g., gifted English learners or students identified as gifted and eligible for special education services).
22	29	EL/All/Differentiated Instruction	ELD	Professional development for teachers focuses on student learning, with attention given to tailoring curriculum and instruction to students' needs , all of which is compatible with current research and the English-language arts content standards.
23	35	EL/All/Differentiated Instruction	ELD/Academic Language	All stakeholders in the promotion of literacy should understand that the inclusion of the key instructional components described previously is the goal for all schools. Additional factors that are important in a successful language arts program are students' personal attributes, such as motivation and effort, and development of academic language .
24	35	EL/All/Differentiated Instruction	ELD/Academic Language	Proficiency in decoding and encoding skills is necessary but not sufficient for comprehending and writing about academic subject matter. Students also have to understand, use, and ultimately live the academic language of books and schooling.
25	36	EL/All/Differentiated Instruction	ELD/Academic Language	Hearing language is not enough for students to learn academic language . They must produce it by speaking and writing it . Talking about text is necessary for them to develop their active vocabulary... They must <i>use</i> words rather than just receive them passively in order to retain new vocabulary.

CHAPTER 3: CONTENT STANDARDS AND INSTRUCTIONAL PRACTICES KINDERGARTEN THROUGH GRADE THREE²

Citation Number	Page Number	English Learner/ All Students/ Differentiated Instruction References	English Language Development/ Academic Language References	Reading/Language Arts Framework Text Language:
26	40	EL/All/Differentiated Instruction	ELD	By the end of the third grade, students should be able to (1) read complex word forms accurately and fluently in connected texts and decode multisyllabic words independently; (2) read grade-level narrative and expository texts and recall sequence, main ideas, and supporting details; and (3) write compositions that describe familiar events and experiences and construct complete, correct sentences to communicate their ideas. In addition, they should be able not only to respond to questions but also to make well-organized oral presentations centered on major points of information. As a result of their new skills, they are beginning to enjoy the richness of ideas expressed in books. Achievement of those skills by the end of the third grade is the goal for all students.
27	41	EL/All/Differentiated Instruction	ELD	Phonemic awareness, the ability to hear and manipulate the sounds of language, is a key indicator for students who learn to read easily versus children who continue to have difficulty.
28	42	EL/All	ELD	Beginning in kindergarten and continuing into the first grade, children should be explicitly taught the process of blending individual sounds into words.
29	42	EL/All/Differentiated Instruction	ELD	In the late first grade and continuing through the second and third grades, students focus on two dimensions of word recognition—advanced word recognition skills and automaticity. In the first grade they progress from vowel-consonant and consonant-vowel-consonant word types to consonant blends, vowel digraphs, and r-controlled letter-sound associations. Inflected endings and word roots are added to extend word-recognition abilities. In the second grade decoding and word-recognition skills take on greater sophistication with the addition of multisyllabic words and more complex spelling patterns. In both the second grade and the third grade, more advanced decoding strategies focus on how to break up multisyllabic words and employ morphemic analysis (analyzing affixes and word roots). The second-grade and third-grade curriculum also focuses on orthographic knowledge; that is, recognizing larger, more complex chunks of letters (e.g., <i>ight, ierce</i>) to enhance fluency.
30	43	EL/All/Differentiated Instruction	ELD	Instruction in developing fluency must focus first on explicit opportunities for the student to learn the skill or strategy. Once a skill is learned, fluency develops as a result of multiple opportunities to practice the skill or strategy with a high rate of success.
31	43	EL/All/Differentiated Instruction	ELD/Academic Language	An important feature of language arts instruction in kindergarten through grade three is vocabulary development , beginning in kindergarten with direct instruction in specific categories of words and progressing to understanding the relations of such words as synonyms and antonyms and the importance of structural features of words (affixes) to word meaning (Beck, McKeown, and Kucan, 2002). Wide reading is essential to learning vocabulary and must be an integral component of instruction. At first the teacher should read literary and expository texts to students , exposing them to vocabulary they are not yet able to read. As students develop proficiency in word recognition, they are taught independent word-learning strategies, such as learning meanings

² English/Language Arts Standards for Reading in grades K-3 are in the English Language Development Standards.

				from context and using dictionaries and glossaries as instructional resources.
32	44	EL/AII	ELD	For early decoding in the first grade, students read stories in which there are a high percentage of words composed of taught letter-sound correspondences and a few previously taught sight words.
33	44	EL/AII	ELD	...students receive explicit instruction and opportunities to answer simple questions about <i>who</i> and <i>what</i> . More abstract <i>why</i> and <i>what if</i> questions are mastered in the first and second grades.
34	45	EL/AII	ELD	Direct teaching and modeling of the strategies and readers' application of the strategies to the text they hear and read increase the ability of students to develop literal and inferential understanding, increase vocabulary, and make connections between parts of a text , between separate texts, and between text and personal experience .
35	45	EL/AII	ELD	Most students require explicit instruction in strategies related to reading comprehension, just as they do for decoding. Before the students listen to or read a story or informational passage, the teacher must bring to bear relevant student experiences and prior knowledge, develop knowledge of the topic, and teach critical, unfamiliar vocabulary .
36	45	EL/AII	ELD	While the students are reading, the teacher should introduce questions strategically to focus attention on critical information and encourage the students to monitor comprehension by self-questioning and returning to the text to fill in gaps in comprehension . When the students have finished reading, they should engage in analysis and synthesis, retelling, summarizing, and acting on information, such as placing events in sequential order.
37	46	EL/AII	ELD	...kindergartners and early first graders also develop the strategies orally in response to text that has been read aloud....
38	46	EL/AII	ELD	Students in kindergarten through grade three develop foundational writing strategies, applications, and conventions . They begin by forming uppercase and lowercase letters and using their knowledge of letters and sounds to write words. That knowledge of the alphabetic principle continues in the first grade as students write sentences. By the second grade writing extends to paragraphs, and by the third grade students write paragraphs with topic sentences. In penmanship students progress from legible printing in the first grade to the use of cursive or jointed italic in the third grade.
39	47	EL/AII	ELD	The systematic progression of instruction and application from kindergarten through grade three prepares students to write clear and coherent sentences and paragraphs that develop a central idea. Their writing shows clear purpose and awareness of audience as they refine their ability to use writing to describe and explain objects, events, and experiences
40	47	EL/AII	ELD	...the dimensions of organization, grammar, sentence structure, spelling, basic punctuation and capitalization, and handwriting are introduced and extended progressively .
41	48	EL/AII	ELD	...oral English-language conventions are integrated with the respective strands (writing applications, speaking applications) where they are most directly applied.
42	48	EL/AII	ELD	Spelling instruction and proficiency progress in the first grade from Spelling instruction and proficiency progress in the first grade from phonetic stages, during which children learn to represent all of the prominent phonemes in simple words, to more advanced phonetic, rule-governed, and predictable patterns of spelling in the second and third grades, during which children learn to represent all of the prominent phonemes in simple words, to more advanced phonetic, rule-governed, and predictable patterns of spelling in the second and third grades
43	48	EL/AII	ELD	... temporary spellings , specifically those used in the phonetic stage, can be "helpful for developing understanding of the identity and segmentation of speech sounds and sound-spelling relationships.

				<p>Conventionally correct spelling should be developed through focused instruction and practice. Primary children should be expected to spell previously studied words and spelling patterns correctly in their final writing products." Fundamental skills in sentence structure, grammar, punctuation, capitalization, and spelling become building blocks for more advanced applications.</p> <p>In kindergarten through grade three, students develop listening and speaking strategies and speaking applications that parallel and reinforce instruction in the other language arts. For example, as students learn to identify the major elements in stories, they practice retelling stories and include characters, settings, and major events. When speaking, they need systematic opportunities to use the vocabulary introduced in reading and writing. Students are taught to listen and follow instructions that begin as one-step directions in kindergarten and progress to three and four steps in the second and third grades.</p> <p>...students must learn not only to hear and manipulate the sounds in words but also to practice skills and integrate them into beginning reading and spelling activities. However, if they practice writing sentences with correct punctuation and capitalization but never apply those skills in larger contexts or for authentic purposes, instruction is fragmented and the skills-without purpose. The goal in language arts instruction must, therefore, be to ensure that component parts (skills, strategies, structures) are identified; are carefully sequenced according to their complexity and use in more advanced writing applications; are developed to mastery; and are progressively and purposefully connected and then incorporated with authentic learning exercises, including those presented in the study of history—social science, mathematics, and science.</p>
44	49	EL/All	ELD/Academic Language	<p>A typical kindergarten enters school with little formal knowledge of academic requirements and uses of language. Exiting third graders who have mastered the code are able to access, comprehend, compose, discuss, and enjoy a wide range of literature and informational text. Their transformation comes from the systematic and strategic design and delivery of instruction anchored to the English—language arts content standards. Students who acquire necessary skills and knowledge early have a high probability of continued academic success.</p>
45	49	EL/All	ELD	<p>Critical to the task are well-trained classroom teachers and teaching specialists who plan and implement lessons and assessments based on standards and current research and who are tireless in their efforts to teach all children to read, write, speak, and listen well.</p>
46	50	EL/All	ELD	<p>Each student must understand the relation of print to speech, the sound structure of language, and the alphabetic principle and be able to apply those abilities to grade-level text.</p>
47	50	EL/All	ELD	<p>Although all the skills within strands are important, no greater responsibility exists for educators of students in kindergarten through grade three than to ensure that each student in their care leaves the third grade able to read fluently, effortlessly, independently, and enthusiastically. Each student must understand the relation of print to speech, the sound structure of language, and the alphabetic principle and be able to apply those abilities to grade-level text. Effective instruction in reading nurtures both comprehension and fluency in word recognition. Concentration on the skills that build word recognition are critically important in the early primary grades.</p>
48	50	EL/All	ELD	<p>Learning to read is the most important skill that students develop during their early academic years. Moreover, converging evidence reveals that the kindergarten through grade three span is the optimal period of time for such learning. Students who fail to read fluently by the end of the third grade have only a minimal chance of achieving literacy competence without specific interventions</p>
49	50-51	EL/All	ELD	
50	51	EL/All	ELD	

51	52	EL/All	ELD	<p>Becoming a fluent and skillful reader requires extensive engagement with the English language, including:</p> <ul style="list-style-type: none"> • Listening to words and to the sounds inside of words • Hearing and talking about stories • Gaining facility with the concepts of print • Understanding the sounds that make up our language • Manipulating the sounds and relating the specific sounds to printed letters and words • Connecting words with events, actions, things, and ideas and expressing those ideas in writing • Learning about the connection between sounds, letters, syllables, words, and concepts • Gaining an understanding of the structure of stories and informational text and relating events to personal experiences
52	52	EL/All	ELD	<p>Reading as a process is more than it appears to be. Because it does not come naturally to many students, the parts, especially the important parts, must be taught strategically and intentionally as an absolute priority.</p>
53	52	EL/All	ELD	<p>To improve reading achievement, we must fully understand and appreciate the complexity and primacy of early reading instruction. The dimensions of beginning reading are like the strands of a strong rope. Like such a rope, the strength of the reading process depends on the strength of the individual strands, the strategic integration of all the strands, and the effective binding or connecting of the strands.</p>
54	53	EL/All	ELD	<p>First, it is critical that the strands, including vocabulary acquisition, concepts about print, phonemic awareness, decoding and word recognition, knowledge of the structure of stories, and listening comprehension are robust, stable, and reliable. Next, the strength of the reading process depends on strategic integration of the strands to produce readers who can apply their skills in a variety of contexts and tasks.</p>
55	53	EL/All	ELD	<p>An important principle in early reading instruction is that skills from all strands must be part of the students' reading programs from kindergarten on. Emphasis on particular skills will differ over time and from student to student. For example, word-recognition skills should be transferred and applied, first with decodable text where students can apply and practice the skills reliably and then with quality literature and informational texts as students demonstrate an ability to apply skills and strategies successfully.</p>
56	53	EL/All	ELD	<p>A second essential principle is that new skills must be integrated across strands to reinforce and extend learning. For example, words learned in word-reading exercises can be used in writing, and vocabulary from a story can be incorporated with speaking. Systematically establishing connections between new skills and authentic applications and between skills in one strand and applications in another is essential to retention and generalization.</p>
57	56	EL/All	ELD	<p>A primary focus of language arts instruction in kindergarten is making sense of the alphabet and its role in reading. Familiarity with the letters of the alphabet is a powerful predictor of early reading success</p>
58	56	EL/All	ELD	<p>By the end of kindergarten, students should be able to name all uppercase and lowercase letters and match all letters with their associated sounds.</p>
59	56	EL/All	ELD	<p>The kindergarten experience should also expose students to a range of print forms and functions. Students learn to use conventions of print not only to negotiate print but also to aid comprehension</p>
60	57	EL/All	ELD	<p>The most essential element of language arts instruction in kindergarten is the development of phonemic awareness; that is, teaching students the sound structure of language.</p>

61	57	EL/All/Differentiated Instruction	ELD	<p>Instruction in phonemic awareness can span two years, kindergarten and first grade. But in this aspect of teaching as in others, the teacher must be guided by the students' developing competencies. Some students require little training in phonemic awareness; others might require quite a bit. Although early phonemic awareness is oral, the teacher must be careful not to delay in providing learning opportunities with print.</p> <p>Oral activities in kindergarten should focus on such simple tasks as rhyming, matching words with beginning sounds, and blending sounds into words. Midyear screening of all students to determine their phonemic awareness and need for further instruction is also important.</p> <p>In a review of phonemic awareness interventions to enhance the early reading achievement of students with and without disabilities, the following instructional strategies were found effective (Smith, Simmons, and Kame'enui, 1998):</p> <ol style="list-style-type: none"> 1. Modeling phonemic awareness tasks and responses orally and following with students' production of the task 2. Making students' cognitive manipulations of sounds overt by using concrete representations (e.g., markers, pictures, and Elkonin boxes) or auditory cues that signal the movement of one sound to the next (e.g., claps) 3. Teaching skills explicitly and systematically 4. Adding letter-sound correspondence instruction to phonological awareness interventions after students demonstrate early phonemic awareness 5. Progressing from the easier phonemic awareness activities to the more difficult—from rhyming and sound matching to blending, segmentation, and manipulation 6. Focusing on segmentation or the combination of blending and segmenting 7. Starting with larger linguistic units (words and syllables) and proceeding to smaller linguistic units (phonemes) 8. Focusing beginning instruction on the phonemic level of phonological units with short words (two to three phonemes; e.g., <i>at, mud, run</i>) 9. Focusing first on the initial sound (sat), then on the final sound (sat), and lastly on the medial sound (sat) in words 10. Introducing several continuous sounds first (e.g., /m/, /r/, /s/) before introducing stop sounds (e.g., /t/, /b/, /k/) because stop sounds are more difficult to isolate 11. Providing brief instructional sessions (Significant gains in phonemic awareness are often made in 15 to 20 minutes of daily instruction and practice over a period of 9 to 12 weeks.) <p>In kindergarten students begin to work with words in three important ways: decoding, spelling, and writing. Decoding is of primary importance. The students learn the prerequisites (phonemic awareness, letter-sound correspondences) and requisites (blending individual letter-sound correspondences to read whole words) of decoding.</p>
62	58	EL/All	ELD	
63	58-59	EL/All	ELD	
64	59	EL/All	ELD	
65	60	EL/All	ELD	<p>Curriculum and instruction in kindergarten must also develop understanding of concepts and vocabulary as building blocks of language: categories of color, shape, and words used in kindergarten instruction (e.g., <i>group, pair, same</i>). Vocabulary is developed through direct instruction in specific concepts and vocabulary and exposure to a broad and diverse vocabulary while listening to stories. For students who enter kindergarten with limited knowledge of vocabulary, special instruction in concept and language development should be provided to</p>

66	60	EL/All	ELD	<p>help close the widening vocabulary gap between them and their peers....</p> <p>Teachers should identify vocabulary words critical to listening comprehension and teach those words directly. Factors that influence the learning of vocabulary are (1) providing multiple exposures to words; (2) selecting and teaching words that are important to understanding a story or are high-utility words; (3) having students process words deeply and in multiple contexts; and (4) providing definitional and contextual support....</p> <p>Most students are not able to read sophisticated stories in kindergarten on their own but learn to identify and use strategies to comprehend the stories that are read to them daily. In the kindergarten curriculum important strategies for teaching comprehension as students listen to stories are (1) using pictures and context to make predictions; (2) retelling familiar stories; and (3) answering and asking questions about essential elements. Factors to be considered when introducing comprehension strategies are:</p> <ol style="list-style-type: none"> 1. Easing into instruction, beginning with stories containing obvious information and considering the complexity of the text 2. Controlling the difficulty of the task initially by introducing the strategy first in sentences and paragraphs and then in stories 3. Modeling multiple examples and providing extensive guided practice in listening-comprehension strategies 4. Inserting questions at strategic intervals to reduce the memory load for learners when introducing strategies in stories. (For example, have students retell the important events after each page rather than wait for the end of the story.) 5. Using both narrative and expository text
67	60-61	EL/All	ELD	<p>If opportunities to write are ample and well complemented by other literacy activities and alphabetic instruction, kindergartners should be using real letters to spell out words phonetically before the school year is out (Moats, 2000). The practice of encouraging children to write and spell words as they sound (sometimes called temporary spelling) has been shown to hasten refinement of children's phonemic awareness and to accelerate their acquisition of conventional spelling when it is taught in first grade and up."</p> <p>Kindergarten instruction focuses on the development of receptive and expressive language. Initially, preschool students learn to process and retain sentence-level instructions. Eventually, they begin to use their knowledge of sentence structure to produce their own clear, coherent sentences. To do so, the students must have models of such sentences and opportunities to produce them. For some, instruction begins first with statement repetition and progresses to statement production. Instruction in this focus area must be carefully organized to include:</p> <ol style="list-style-type: none"> 1. Explicit modeling of standard English 2. Carefully constructed linguistic units that progress from short sentences to longer sentences 3. Frequent opportunities to repeat sentences 4. Additional, gentle modeling emphasizing specific elements of sentences omitted or pronounced incorrectly 5. Strategically designed instruction that shifts from statement repetition to statement production 6. Structured statement production whereby students first generate responses to questions from pictures
68	62-63	EL/All	ELD	
69	63-64	EL/All	ELD	

				or prompts and then generate questions or responses without prompts
70	64	EL/All	ELD	Kindergarten students expand their speaking skills by reciting poems, rhymes, and songs. They make brief oral presentations about familiar experiences or interests and learn to describe people, places, things, location, size, color, shape, and action. The following activities integrate standards across domains, strands, and academic disciplines. Teachers may wish to:
71	64-65	EL/All	ELD	<ol style="list-style-type: none"> 1. Read aloud and discuss quality literature to extend students' oral vocabulary, concepts about print, and understanding of characters, settings, and important events. 2. Begin letter-sound instruction when students demonstrate some phonemic awareness. Then incorporate instruction in letter sounds and simple decoding to help phonemic awareness develop further. 3. Use only previously taught letters and letter-sound associations to spell words. 4. Use words students can read in writing activities. 5. Incorporate words from vocabulary instruction throughout the day and across subject disciplines. 6. Provide multiple opportunities for students to hear and practice new vocabulary. 7. Provide opportunities for students to retell stories and model retelling familiar stories, emphasizing English-language conventions. 8. Read aloud and discuss expository text consistent with the kindergarten science, mathematics, and history-social science standards.
72	67	EL/All	ELD	Instructional Objectives <ol style="list-style-type: none"> 1. Determine whether letters and letter sounds will be introduced simultaneously or separately. This consideration is extremely critical for students who have difficulty acquiring and retaining information. 2. Define the task for learners. <i>Match</i> implies that students produce the sound in response to a letter. 3. Determine when each letter-sound correspondence will be learned. To enable students to accomplish Reading Standard 1.15 (Read simple one-syllable and high-frequency words; i.e., sight words), the teacher must introduce more than just one letter-sound per week.
73	67-68	EL/All	ELD	Instructional Design <ol style="list-style-type: none"> 1. Schedule the introduction of letter sounds to optimize learning. 2. Separate easily confused letters and sounds. 3. Introduce early in the sequence those letter sounds that occur in a large number of words. 4. Introduce early those letter sounds that relate to letter names (e.g., /s/, /r/, /m/) to facilitate learning. 5. Include a few short vowels early to allow students to build words easily. 6. Use several continuous sounds early that can be stretched (e.g., /m/, /n/, /s/) rather than stop or abrupt sounds (e.g., /t/, /b/, /d/) because continuous sounds facilitate blending. 7. Review letter sounds cumulatively to promote retention. 8. Determine whether students can handle uppercase and lowercase letters simultaneously. If so, introduce those letters in which uppercase and lowercase are similar (e.g., S s, P p, C c) before ones that are different (e.g., D d). For dissimilar letters withhold introducing the uppercase letter until later in the sequence. 9. Teach students to use letter sounds in simple word reading as soon as they have a group of letter sounds (four to six) from which to build words. 10. Include a phonemic awareness objective and parallel instruction focused on the phoneme level (e.g.,

				<p>Reading Standards 1.7, 1.8, 1.9).</p> <p>11. Introduce simple word reading (e.g., vowel-consonant, as in <i>an</i>, or consonant-vowel-consonant, as in <i>sat</i>) once students have mastered a small number of letter-sound correspondences contained in those words.</p> <p>Instructional Delivery</p> <p>1. Model the process of producing the sound and matching it with the letter. <i>Ensure that sounds are correctly pronounced and not turned into nonexistent syllables (not <i>muh</i> but <i>mmm</i>).</i></p> <p>2. Use and allow students to use a variety of media (chalkboard, magnetic letters, magic slates, and sounds written on chart paper) to reinforce letter-sound practice.</p> <p>3. Divide instruction into (a) new letter-sound instruction; and (b) discrimination practice in which previously introduced letter-sounds are reviewed and distinguished from the newly introduced sound. If students do not know the sound, model the sound, provide an opportunity for them to identify or match the sound, and return to the letter sound later in the lesson to reinforce and review.</p> <p>4. Teach letter sounds explicitly, using a <i>teacher model, guided practice, and independent practice sequence.</i></p> <p>5. Provide frequent, short periods of instruction and practice during the day.</p> <p>6. Relate letter-sound instruction to the standard of hearing sounds in words (phonemic awareness). Discuss the connection of hearing sounds (aural) and mapping those sounds to print (alphabetic).</p>
74	68-69	EL/All	ELD	<p>1. Entry-Level Assessment for Instructional Planning</p> <p>a. Before instruction assess student knowledge by showing an array of all the letters ordered randomly on a page. An alternative is to order the letter sounds in the sequence to be introduced in the instruction. The font should be large enough that the letters can be easily distinguished. Model the task on a couple of letter sounds. Show a row or column of letters and ask the child to tell you the sound of the letter. If the child tells you the name, say, "That's the name of the letter. Can you tell me the sound it makes?" Continue until the student has completed the task or you have sufficient information about the student's knowledge of letter sounds. If the student misses five consecutive sounds, stop testing.</p> <p>b. This stage of assessment is important because it provides direct information for instruction. Examine the letter-sound profiles of students in the class to determine whether consistent errors on specific letter-sound correspondences are evident.</p> <p>c. Determine whether you are assessing for accuracy or for fluency. Accuracy measures simply document whether letter sounds are identified correctly or incorrectly. An alternative measurement procedure is to assess for fluency of letter-sound knowledge. Provide the student a page of letter-sound correspondences arranged in rows in random order on the page. Ask the student to say the sound for each letter on the page. Allow one minute for the exercise. Record the letter-sound correspondences correctly identified and those in error. Subtract the errors from the total. The resulting score will be the number of letter sounds per minute. This method allows you to monitor student growth over time by periodically administering one-minute assessments of letter-sound fluency.</p> <p>d. Knowledge of letter-sound correspondence is an important indicator for establishing flexible skill-based instructional groups. Review the class profile to determine which students have considerable knowledge, moderate knowledge, or limited knowledge. Design flexible groupings to accommodate instruction to the learners' entry performance level.</p>
75	69-70	EL/All/Differentiated Instruction	ELD	

76	70-71	EL/All/Differentiated Instruction	ELD	<p>2. <i>Monitoring Student Progress Toward the Instructional Objective.</i> This assessment phase is designed to determine students' progress and mastery of letter-sound knowledge. The options available are:</p> <p>a. Maintaining a set of letter sounds that have been taught and assessing student performance at least biweekly to evaluate progress on those sounds. Document letter sounds students can and cannot identify.</p> <p>b. Monitoring progress toward the long-term goal of knowledge of all letter-sound correspondences. Use a format similar to the entry-level assessment and monitor progress at least once every two weeks. Document performance (numbers of correct letter sounds and those in need of further instruction). Again, if a student makes five consecutive errors, discontinue the assessment.</p>
77	71-72	EL/All/Differentiated Instruction	ELD	<p>3. <i>Post-test Assessment Toward the Standard.</i> On completion of letter-sound instruction, assess student performance according to the procedures used to assess entry-level performance. The focus at this point should be on letter-sound fluency, and the goal of instruction is that students identify letter sounds accurately and automatically, enabling the students to apply letter sounds to read simple vowel-consonant (VC) or consonant-vowel-consonant (CVC) words. A target for achievement is for students to read letter-sound correspondences at a rate of one per second. Post-test assessment should include a fluency rate if it was not part of entry-level assessment. <i>Note:</i> Instruction in word reading can begin once students have learned a small number of consonants and vowels that enable them to read words.</p>
78	72-73	EL/All/Differentiated Instruction	ELD	<p><i>Students Who Are English Learners.</i> The following suggestions assume that students will begin language arts instruction in English and that literacy instruction will be augmented by concurrent formal linguistic instruction in English (English-language development).</p> <p>If language arts instruction is provided in part in a primary language, instruction in the primary language should be designed according to the same standards and principles indicated for language arts instruction in this framework. Suggested procedures to follow are to:</p> <p>a. Ensure that students have had sufficient opportunities through prior activities in phonemic awareness to hear, distinguish, and produce sounds being introduced. Teachers should be aware of phonological differences between English and the students' primary language and provide additional exposure to and practice with the difficult sounds.</p>
79	73	EL/All/Differentiated Instruction	ELD	<p>b. Provide students with additional systematic guidance and practice if they are unable to match all consonant and short-vowel sounds to appropriate letters.</p> <p>c. Schedule additional brief practice sessions for English learners who have difficulty in learning letter-sound correspondences. They should benefit from additional review and practice of particularly difficult letter sounds.</p> <p>d. Ensure that (1) students receive instruction or have had experiences (or both) with the words to be used in simple word reading; and (2) they understand the meaning of the words.</p> <p>e. Encourage English learners to take home age-appropriate materials (e.g., flash cards, decodable text, handouts) related to the teaching objective.</p>
80	73-74	EL/All	ELD	<p>Instructional Materials</p> <p>1. Sequence the introduction of letter-sound correspondences, strategically separating easily confused sounds (e.g., /p/, /b/, /v/ and vowel sounds, especially /e/ and /i/) and introducing high-utility sounds first.</p> <p>2. Scan the introduction of letter sounds for potential problems. The goal of letter-sound instruction is to provide the tools needed for word reading. Instructional texts should first introduce letter sounds in</p>

				isolation. Then sounds that have been taught should be incorporated into words. 3. Include entry-level and progress-monitoring measures as well as assessments that allow teachers to identify advanced learners. 4. Ensure that similar skills (e.g., phonemic awareness and word reading) are correlated and that connections are made in instructional materials and instruction. 5. Proceed to simple instruction in word reading once students develop a set of letter sounds that allow them to read vowel-consonant or consonant-vowel-consonant words (not necessarily all sounds). An instructional priority must be that the students learn to read and exit (first) grade with the ability to decode and recognize increasingly complex words accurately and automatically. ...students must have broad and rich experiences to expand their knowledge of vocabulary and concepts and extend their exposure and understanding of literary forms. As they write and speak, they should be able to apply the conventions and structures of sentences. Of foremost importance is the availability of quality instructional materials that will allow students to achieve and apply different standards in the first grade. Specifically, students will need decodable texts with which to practice the decoding skills they are learning. In addition, they will need a broad array of high-quality literature and informational texts for the teacher to read to them as they develop listening comprehension skills prerequisite for reading comprehension.
81	80	EL/All	ELD	
82	80	EL/All	ELD	
83	80	EL/All	ELD	
84	80	EL/All	ELD	First-grade students refine their understanding of the relationship between print and language and extend that understanding to more specific applications. Specifically, they should be able not only to discriminate letters from words and words from sentences but also to match a spoken word (e.g., car) with a printed word. This awareness of words and their relation to speech is reinforced by instruction and practice in phonemic awareness. First graders further their understanding of books and stories by learning the standard conventions of print , including titles and authors. Instruction in concepts about print is focused on teaching students to (1) match oral words with printed words; (2) learn the conventions of stories, books, and other forms of literature (titles, authors); and (3) discriminate letters, words, and sentences. A recommended instructional method is to teach a particular convention of print (e.g., title) as any other basic concept, using a wide range of examples. Once students learn the basic concept, it should be incorporated into a wide array of text forms and be reviewed systematically. The first-grade curriculum and instruction in phonemic awareness prepare learners by making explicit the relationship between the words they hear and the phonemic structure of the language. Students must possess phonemic awareness if they are to understand the relationship between speech and print and therefore develop proficiency in reading and writing increasingly complex words and word types. Through systematic instructional sequences, students should become not only phonemically aware but also phonemically proficient in identifying and producing a range of phonemic awareness skills. First-grade students should be provided with systematic and extensive instruction and practice in: • Learning to analyze words at the phoneme level (i.e., working with individual sounds within words) • Working with phonemes in all positions in words (initial, final, medial) • Progressing from identifying or distinguishing the positions of sounds in words to producing the sound and adding, deleting, and changing selected sounds
85	80	EL/All	ELD	
86	82	EL/All	ELD	
87	82	EL/All	ELD	
88	83	EL/All	ELD	

			<ul style="list-style-type: none"> • Allocating a significant amount of time to blending, segmenting, and manipulating tasks • Working with increasingly longer words (three to four phonemes) • Expanding beyond consonant-vowel-consonant words (e.g., <i>sun</i>) to more complex phonemic structures (consonant blends) • Incorporating letters into phonemic awareness activities • Aligning the words used in phonemic awareness activities with those used in reading 		
89	83-84	EL/All	ELD	<p>Instruction in phonemic awareness can span two years, kindergarten and first grade. But in this aspect of teaching as in others, the teacher must be guided by the students' developing competencies. Some students require little training in phonemic awareness; others might require quite a bit. Although early phonemic awareness is oral, the teacher must be careful not to delay in providing learning opportunities with print. Learning phonics and learning to decode and write words all help students continue to develop phonemic awareness.</p> <p>Adequate, ongoing assessment of student progress is essential.</p> <p>A priority of the first-grade curriculum must be to ensure that all students develop alphabetic insight and extend their ability to decode words independently and read words automatically. Automaticity comes from reading many decodable texts in which most words are composed of taught letter-sound correspondences and some words are taught directly as sight words.</p>	
90	84	EL/All	ELD	<p>A review of the content standards indicates that in the first grade students progress from being able to generate the sounds for all consonants and vowels to reading compound words, words with inflectional endings, and common word families.</p>	
91	84	EL/All	ELD	<p>Decoding plays an essential role in this evolution from a time when students enter with limited knowledge of how to recognize words to a time when they leave fully able to recognize unfamiliar words. Beginning decoding (or more technically, phonological recoding) is the ability to (1) read from left to right simple, new regular words; (2) generate sounds from all the letters; and (3) blend those sounds into a recognizable word</p> <p>Explicit instruction and attention to specific letters in words and repeated opportunities to practice words successfully result in automaticity—the ability to recognize a word effortlessly and rapidly. Decoding is essential to reading unfamiliar words and reading words independently and is a critical benchmark in a student's reading development.</p>	
92	84	EL/All	ELD	<p>In the first grade the skills and strategies learned in decoding and word recognition are extended in the standards for writing conventions.</p>	
93	84	EL/All	ELD	<p>...students learn to read compound words and contractions, economy in instruction can be gained by having the students write the words and use them in speaking.</p> <p>Decoding instruction in the first grade should:</p>	
94	84	EL/All	ELD	<ul style="list-style-type: none"> • Progress systematically from simple word types (e.g., consonant-vowel-consonant) and word lengths (e.g., number of phonemes) and word complexity (e.g., phonemes in the word, position of blends, stop sounds) to more complex words. • Model instruction at each of the fundamental stages (e.g., letter-sound correspondences, blending, reading whole words). • Sequence words strategically to incorporate known letters or letter-sound combinations. • Provide initial practice in controlled connected text in which students can apply their newly learned skills 	
95	85	EL/All	ELD		
96	85	EL/All	ELD		
97	85-86	EL/All	ELD		

				<p>successfully.</p> <ul style="list-style-type: none"> • Include repeated opportunities to read words in contexts in which students can apply their knowledge of letter-sound correspondences. • Use decodable text based on specific phonics lessons in the early part of the first grade as an intervening step between explicit skill acquisition and the students' ability to read quality trade books. Decodable text should contain the phonics elements and sight words that students have been taught. However, the text should be unfamiliar to students so that they are required to apply word-analysis skills and not simply reconstruct text they have memorized. • Teach necessary sight words to make more interesting stories accessible.
98	86	EL/All	ELD	<p>First-grade instruction in word analysis should teach students high-frequency irregular words systematically. Words with high utility should be selected and used judiciously in early reading.</p>
99	86	EL/All	ELD	<p>Words with high utility should be selected and used judiciously in early reading. Teachers should point out irregularities while focusing student attention on all letters in the word and should provide repeated practice. The number of irregular words introduced should be controlled so that the students will not be overwhelmed.</p>
100	86	EL/All	ELD	<p>High-frequency words (e.g., <i>was, saw; them, they, there</i>), often confused by students, should be strategically separated for initial instruction as well.</p>
101	86	EL/All	ELD	<p>Teaching students to process larger, highly represented patterns will increase fluency in word recognition. However, the instruction should be carefully coordinated and should build on knowledge gained from instruction in letter-sound correspondence.</p>
102	87	EL/All	ELD	<p>The curriculum and instruction offered in the first grade extend the understanding of concepts and vocabulary in English. ... Vocabulary development occurs through both direct instruction in specific concepts and words and through exposure to a broad and diverse range of words in stories and informational text that have been read.</p>
103	87	EL/All	ELD	<p>In addition to learning specific vocabulary, first-grade students also learn to use context and surrounding text to understand the meaning of unknown words. They are provided instruction and opportunities that prepare them to use new and descriptive vocabulary in their speaking and writing.</p>
104	88	EL/All	ELD	<p>Reading comprehension can be developed through listening and reading. ... The oral readings should have more complex vocabulary, syntactic structures, and story lines than are found in the text used for decoding and word recognition.</p>
105	88	EL/All	ELD	<p>Key comprehension strategies for first graders include:</p> <ul style="list-style-type: none"> • Identifying text that uses sequence or other logical order • Following one-step written instructions • Responding to or posing who, what, when, where, and how questions • Recognizing the commonalities that occur across stories and narrative text • Using context to resolve ambiguities about the meaning of words and sentences • Confirming predictions by identifying supporting text • Relating prior knowledge to textual information • Retelling the central ideas of simple expository or narrative passages

106	88	EL/All	ELD	<p>Instruction in comprehension is designed with the same precision as instruction in word recognition. For comprehension to occur, the words in the text, along with their meanings, must first be accessible to the learner. Initial reading comprehension is practiced with texts students can read at their level.</p> <p>When appropriate, the complexity of comprehension instruction may be simplified by allowing students to learn and practice the strategy from information presented in speech or in pictures. If the forms of presentation are not appropriate, initial instruction in comprehension can begin with manageable textual units(e.g., sentences, short paragraphs before longer passages, and complete stories).</p> <p>Additional instruction in comprehension may include:</p> <ul style="list-style-type: none"> • Modeling multiple examples and providing extensive guided practice in comprehension strategies • Helping students recognize the features of text that facilitate comprehension • Brainstorming central ideas from the text (e.g., What do we know about what frogs eat? What do we know about where they live? What do we know about their appearance? What else would we like to know about frogs?) <p>The text for initial instruction in comprehension should (1) begin with linguistic units appropriate for the learner; (2) use familiar vocabulary; (3) be based on a topic with which the learner is familiar; and (4) use simple syntactical structures.</p>
107	88-89	EL/All	ELD	
108	89	EL/All	ELD	<ul style="list-style-type: none"> • For example, instruction designed to teach children to answer <i>who</i>, <i>what</i>, <i>when</i>, <i>where</i>, and <i>how</i> questions (Reading Comprehension Standard 2.2) would consist of determining which type of question to ask first. <i>Who</i> and <i>what</i> questions are typically easier to answer than <i>when</i> and <i>where</i> questions. For <i>when</i> and <i>where</i> questions, instruction in how to identify the when and where in text may be necessary. <p>When students can correctly identify and discriminate between when and where, they learn to answer questions from sentences.</p>
110	89	EL/All	ELD	<p>A simple instructional design would teach each type of question separately. After one type is clearly understood and applied (e.g., <i>who</i>), a second type (e.g., <i>what</i>) would be introduced. After both types are understood, <i>who</i> and <i>what</i> questions can be combined in an instructional session.</p>
111	90	EL/All	ELD	<p>At the very beginning of instruction, first-grade students should be given a linguistic structure they can comprehend. Sentences are, therefore, a plausible starting point because they provide a manageable unit of language that conveys information. Once students can answer questions at the sentence level, the teacher can proceed to multiple sentences and eventually to paragraphs. Students who are more advanced can be prompted to ask and answer the questions.</p>
112	90	EL/All	ELD	<p>The importance of understanding the structures of text is reflected in the number of related standards. For Literary Response and Analysis Standard 3.1, for example, students read about and learn the elements of stories.</p> <p>...</p>
113	90	EL/All	ELD	<p>Strategies recommended in teaching organizational sequences of text (informational or narrative) are:</p> <ul style="list-style-type: none"> • Ensuring that students have a conceptual understanding of beginning, middle, and end • Introducing text where the components of text are explicit (beginning, middle, and end being obvious) • Beginning with short passages to reduce the memory load for learners • Focusing on only one component at a time (e.g., beginning) • Introducing an additional component when students can reliably identify those previously taught • Guiding students through sample text in which teachers think out loud as they identify the components
114	90-92	EL/All	ELD	

115	92	EL/All/Differentiated Instruction	ELD	<ul style="list-style-type: none"> • Having students discuss the elements orally and make comparisons with other stories • Using the beginning, middle, and end as a structure for recalling and retelling the story or information <p>Students should be taught explicitly how to use their knowledge of the phonemic structure of words and letter-sound correspondences to spell <i>the words they do not know</i>. As students begin to read words, they should be taught to spell <i>the words they can read</i>. In addition, students need to learn to spell <i>high-frequency words</i> correctly.</p> <p>...some students easily learn to spell correctly, many others do not. Guidelines for instruction in spelling for students who do not easily learn to spell correctly include:</p> <ol style="list-style-type: none"> 1. Systematic, teacher-directed instruction and practice with controlled amounts of new information 2. Regulation of the amount of information presented at one time (Introduce smaller sets of words as opposed to entire lists at one time.) 3. Plentiful opportunities to practice newly introduced spellings 4. Presentation of only one spelling rule or generalization at a time 5. Provision of immediate corrective feedback 6. Organized, sequential instruction that builds on phonological awareness and letter-sound correspondences and regular one-syllable patterns.
116	92-93	EL/All/Differentiated Instruction	ELD	<p>Students in the first grade are introduced to writing as a means of communicating. They begin to understand that writing is a process and learn to apply the process appropriately to write brief narratives and brief descriptions of objects, persons, places, or events. As students learn to apply process writing to narrative and descriptive structures, they also learn the different types of sentences along with the conventions for recording their ideas (e.g., capitalization, punctuation). They learn to apply writing conventions, with particular emphasis being placed on the fundamentals of grammar, punctuation, and capitalization.</p> <p>General guidelines for writing instruction include:</p> <ol style="list-style-type: none"> 1. Selecting and emphasizing those sentence types most useful for communicating ideas 2. Focusing on one form of punctuation until learners achieve mastery and then introducing a second form 3. Sequencing student writing activities so that they first see good models, edit other writing, and then generate their own sentences or text <p>First-grade students are increasingly responsible for comprehending information presented orally, communicating their ideas through speaking and writing, recalling important information from narratives and informational text, and answering questions. Their responses should incorporate greater diversity into the words they use and greater mastery of grammatical structures. To respond to or produce complete, coherent sentences that use descriptive words or correct singular and plural nouns, students need models of those structures along with many opportunities to produce their own sentences.</p> <p>Instructional considerations to improve sentence production include:</p> <ol style="list-style-type: none"> 1. Providing explicit models 2. Eliciting student responses that progress from identification to production 3. Carefully selecting, sequencing, and scheduling instructional targets that allow learners to master one form (e.g., <i>my</i>) before progressing to the next (e.g., <i>his/her</i> or <i>your/yours</i>) 4. Providing frequent opportunities to repeat sentences
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120	94	EL/All	ELD	<p>Students in the first grade are introduced to writing as a means of communicating. They begin to understand that writing is a process and learn to apply the process appropriately to write brief narratives and brief descriptions of objects, persons, places, or events. As students learn to apply process writing to narrative and descriptive structures, they also learn the different types of sentences along with the conventions for recording their ideas (e.g., capitalization, punctuation). They learn to apply writing conventions, with particular emphasis being placed on the fundamentals of grammar, punctuation, and capitalization.</p> <p>General guidelines for writing instruction include:</p> <ol style="list-style-type: none"> 1. Selecting and emphasizing those sentence types most useful for communicating ideas 2. Focusing on one form of punctuation until learners achieve mastery and then introducing a second form 3. Sequencing student writing activities so that they first see good models, edit other writing, and then generate their own sentences or text <p>First-grade students are increasingly responsible for comprehending information presented orally, communicating their ideas through speaking and writing, recalling important information from narratives and informational text, and answering questions. Their responses should incorporate greater diversity into the words they use and greater mastery of grammatical structures. To respond to or produce complete, coherent sentences that use descriptive words or correct singular and plural nouns, students need models of those structures along with many opportunities to produce their own sentences.</p> <p>Instructional considerations to improve sentence production include:</p> <ol style="list-style-type: none"> 1. Providing explicit models 2. Eliciting student responses that progress from identification to production 3. Carefully selecting, sequencing, and scheduling instructional targets that allow learners to master one form (e.g., <i>my</i>) before progressing to the next (e.g., <i>his/her</i> or <i>your/yours</i>) 4. Providing frequent opportunities to repeat sentences

				5. Strategically integrating instruction requiring students to discern the correct usage (e.g., <i>his/her</i> , <i>your/yours</i>)
121	94	EL/All	ELD	In addition to learning sentence-level standards for listening and speaking, students should learn to comprehend and reconstruct sequences of information, including multiple-step directions, poems, songs, and stories. Incremental instruction in which students are taught to recall increasingly longer units should build on the sentence-level guidelines previously outlined. The following activities integrate standards across domains, strands, and academic disciplines. Teachers may wish to: 1. Use known letters, phonemic awareness, letter-sound associations, and encoding skills to read, write, and spell words. 2. Reinforce the connections between phonemic awareness, translating a printed word into its letter-sound correspondences, reading the whole word, and spelling. Use words that students can read in spelling and writing activities. 3. Introduce words from stories in various instructional activities. Provide frequent opportunities for students to hear and practice new vocabulary. 4. Provide ample opportunities for students to hear stories read aloud and then discuss those stories. 5. Provide opportunities for students to retell stories based on their knowledge of story elements. Model how to retell familiar stories, emphasizing coherent English-language conventions. 6. Use the story grammar structure to comprehend, retell, and compose stories. 7. Have students read (and read to them) stories and informational text that address the first-grade content standards in mathematics, science, and history-social science. Before teaching students to recognize the sounds associated with each letter and blend those sounds into a word, determine whether students have the prerequisite skills. Students do not have to know all the letter sounds before initiating blending and word reading Teachers provide extensive instruction (delivered in short increments) and practice in learning to blend easy word types. Instruction and practice in blending must be reintroduced when new word types are introduced. Successful word reading depends largely on: 1. Systematic selection and sequencing of letters in the words to maximize students' ability to blend 2. Progression of word difficulty based on length and configuration of consonants and vowels within the word 3. Explicit instruction and modeling in how to blend letter sounds into words 4. Sufficient practice in transitioning from reading each letter sound at a time to reading the whole word 5. Explicit instruction in how to "sound out words in your head" Systematic Selection and Sequencing of Letters in Words Letter sounds in words have properties that can enhance or impede blending and word reading. For initial instruction in blending, the letters in words should be: • Continuous sounds because they can be prolonged or stretched (e.g., /m/, /s/) • Letters students know • Used in a large number of words for high utility • Lowercase unless the uppercase and lowercase letters have highly similar shapes (e.g., S s; V v)
122	95	EL/All	ELD	
123	97	EL/All	ELD	
124	97	EL/All	ELD	
125	97	EL/All	ELD	
126	98	EL/All	ELD	

				<p><i>Note: Visually and auditorily similar (e.g., /b/ and /d/) letter sounds should not be in the same initial blending activities.</i></p> <p>Progression of Word Difficulty Based on Length and Configuration of Consonants and Vowels Within the Word</p> <p>Words used in blending instruction and practice should:</p> <ul style="list-style-type: none"> • Progress from the short vowel-consonant and consonant-vowel-consonant (two- or three-letter words in which letters represent their most common sounds) to longer words (four- or five-phoneme words in which letters represent their most common sounds). • Reserve consonant blends (e.g., /st/, /tr/, /pl/) until the students are proficient in working with consonant-vowel-consonant configurations. • Begin with continuous sounds in early exercises to facilitate blending. Stop sounds (sounds that cannot be prolonged in the breath stream, such as /t/, /p/, and /ck/) may be used in the final positions of words. • Represent vocabulary and concepts with which students are familiar. <p>Progression from Oral Blending to Oral Whole-Word Reading to “Sounding It Out in Your Head”</p> <ul style="list-style-type: none"> • Orally blending the letter-sound associations of a word is a first step in word reading. In this process students produce each sound orally and sustain that sound as they progress to the next. This process focuses student attention on the individual letters in the word and on their importance. • Once proficient in blending the individual sounds orally, students are taught to put those sounds together into a whole word. This important step must be modeled and practiced. • The final step in this sequence involves students sounding out the letter-sound correspondences “in their head” or silently producing the whole word. <p>This systematic progression is important because it makes public the necessary steps involved in reading a whole word.</p> <p>Orally Blending Individual Letter Sounds</p> <ol style="list-style-type: none"> 1. Model the process of blending the sounds in the word (“I’ll read this word, blending the sounds <i>mmmmmmmaaaaaannnnnn</i>”). Do not stop between the sounds. Make certain that the sounds are not distorted as you stretch them out. You may want to use language that helps make the process more vivid (stretching out the sounds, keeping the sounds going). 2. Use your finger or hand to track under each letter as you say each individual sound. 3. Hold each sound long enough for the students to hear it individually. Stop sounds cannot be prolonged without distortion. When introducing words that begin with stop sounds (such as <i>t</i>, <i>k</i>, and <i>p</i>), teach the students that those sounds should be pronounced quickly and should not be stretched out. 4. Use an explicit teaching sequence in which you model examples first and then have the students blend the words with you. Finally, the students should blend the words on their own. 5. Include a sufficient number of examples to assess students’ proficiency. This instructional segment should be relatively brief (five to ten minutes) in the daily language arts lesson.
127	99	EL/All	ELD	
128	99-100	EL/All	ELD	
129	100	EL/All	ELD	

130	100-101	EL/All	ELD	<p>Producing the Whole Word</p> <ol style="list-style-type: none"> 1. Introduce the whole-word step in which students say the word at a regular pace once they can blend the sounds in the word. 2. Provide sufficient time for students to put the sounds together. The sequence involves orally blending the individual letter sounds in the word and then saying the whole word. <p>Internalizing the Blending Process</p> <ol style="list-style-type: none"> 1. In the final step of the blending process, students sound out the word to themselves and then produce the whole word. 2. Two important dimensions of this phase are: <ol style="list-style-type: none"> a. Showing students how to internalize b. Providing sufficient time for all students to blend the word in their head and say the word 3. On average, students should be able to blend sounds and retrieve a word at a rate of a maximum of one second per letter sound in the word. If they require more time, they may not have mastered the prerequisite skills. <p>Because blending is now an overt process, teachers must use strategies to show students the transition steps. Teachers might wish to model how to trace a finger under each sound, subvocalizing the sounds of the word.</p> <p>General Design</p> <ol style="list-style-type: none"> 1. Provide frequent, short periods of instruction and practice on blending. Examples should include newly introduced letter sounds and newly introduced word types—consonant-vowel-consonant-consonant (e.g., <i>rest</i>). 2. Relate blending instruction to spelling when students master blending and reading words at a regular rate. Teaching students the relationship between reading and spelling strengthens alphabetic understanding and the connections between reading and writing. <p><i>Entry-Level Assessment for Instructional Planning</i></p> <ol style="list-style-type: none"> a. Assess student knowledge of letter sounds to identify letter sounds to use in initial blending and word-reading instruction. Students should be fluent in some letter-sound correspondences prior to beginning word-reading instruction. b. Assess students' phonemic blending ability (e.g., the ability to blend three to four phonemes into a word). c. Determine whether students can read words in lists of word types or in passages containing high percentages of words that are phonetically regular. Identify word types (length and consonant-vowel configuration) that students can read and begin instruction at that point. d. Use nonsense words or pseudo words as measures to assess blending ability. Nonsense words are phonetically regular but have no commonly recognized meaning (e.g., <i>rin, sep, tist</i>). With nonsense words you can determine students' knowledge of individual letter-sound correspondences and blending ability. e. Most first graders will have a limited repertoire of words they can read depending on the kindergarten instruction they have received. Many students may have a core of sight words they can identify and may look like readers. However, they may not have adequate decoding skills.
131	101	EL/All	ELD	
132	101	EL/All	ELD	
133	102	EL/All/Differentiated Instruction	ELD	

134	102-103	EL/All/Differentiated Instruction	ELD	<p><i>Monitoring Student Progress Toward the Instructional Objective</i></p> <p>a. This assessment phase is designed to determine students' progress and mastery of letter-sound knowledge. The options available are:</p> <ul style="list-style-type: none"> • Maintaining a set of taught letter sounds and word types. To evaluate progress, assess student performance at least once every two weeks on words containing familiar letter sounds. Record performance and document particular letter sounds or blending patterns with which they have difficulty (e.g., stopping between sounds; not being able to read whole words). • Monitoring progress toward the long-term goal with a list of words selected randomly from the first-grade curriculum. Although all word types will have been introduced during the early months of the academic year, this measure provides a common measure by which to evaluate students' change in word-reading ability over time. <p>b. Once students are reading individual words at a rate of one word per three seconds or less, introduce connected text as an assessment tool.</p>
135	103	EL/All/Differentiated Instruction	ELD	<p><i>Post-test Assessment Toward the Standard</i></p> <p>a. Blending is a temporary and distributed instructional priority. Students may be able to blend some word types but not others. Therefore, there may be ongoing post-tests depending on the word type being studied.</p> <p>b. Post-tests should be distributed throughout the year. To assess overall growth, administer a test that measures fluency through the use of a nonsense-word measure to determine entry-level skills. Or have the students read a passage that represents the range of word types and blending requirements for the year.</p>
136	104	EL/All/Differentiated Instruction	ELD	<p><i>Students with Reading Difficulties or Disabilities</i></p> <p>a. These students need a firm understanding of prerequisite skills before beginning blending. If they cannot blend sounds auditorily or know only a few letter-sound correspondences, provide appropriate instruction before introducing blending.</p> <p>b. Some first graders will continue to stop between the sounds in a word. Provide extra models of not stopping between the sounds and provide sufficient waiting time for students to process the sounds into the whole word.</p> <p>c. Assess whether the rate of introduction of new letter sounds into blending or new word types is manageable for students with special needs. If the pace is too rapid, provide additional instruction.</p> <p>d. If students have difficulty in retaining the blending strategy, schedule a booster session sometime during the day for one to two minutes.</p>
137	105-107	EL/Differentiated Instruction	ELD	<p><i>Students Who Are English Learners</i></p> <p>The following suggestions assume that students will begin language arts instruction in English and that literacy instruction is augmented by concurrent formal linguistic instruction in English (English-language development). If instruction is provided in part in the primary language and that language is alphabetic, the instruction in the primary language should be designed according to the same standards and principles established for language arts instruction in this framework. It is suggested, therefore, that the teacher:</p> <p>a. Reassess the students' knowledge of letter-sound correspondences and phonological awareness of the sounds included in the lesson before teaching English learners to blend sounds. Additional phonological and letter-sound instruction should be provided as needed. Teachers should be aware of phonological differences between English and the students' primary languages and provide additional exposure to and</p>

			<p>practice with difficult sounds.</p> <p>b. Provide additional modeling and practice for those English learners who need further assistance. Appropriate modeling can be provided by the teacher or by native English-speaking peers. Be sure to provide sufficient waiting time to process and produce sounds.</p> <p>c. Assess whether the rate of instruction of new letter sounds into blending or of new word types is manageable. If not manageable for some students, determine a way to provide additional systematic, guided instruction so that they will be able to catch up with their classmates and accomplish the lesson objective.</p> <p>d. Ensure that students have had previous instruction or experiences (or both) with the words included in the instruction and that they understand their meaning.</p> <p>e. Assess what knowledge is assumed before each unit of instruction. That is, determine what knowledge the typical English speaker already brings to the classroom and provide reteaching of key concepts.</p> <p>f. Have English learners who have acquired literacy skills in their first language draw on those skills in English. Teachers can build on the knowledge of reading skills that students have acquired in their first languages when teaching English letter-sound correspondences.</p> <p>g. Provide English learners with explicit models of the letter-sound correspondences that students are expected to know and correct errors as would be done for other learners. Correction of errors should always be conducted in a way that encourages students to keep trying and helps them see the progress they are making.</p> <p>Instructional Materials</p> <ol style="list-style-type: none"> 1. Texts should contain explicit instruction in the blending process as well as in the transition from blending to the reading of whole words. 2. The letter-sound correspondences included in the words and the word types should be carefully selected. 3. Measures for assessing entry level and progress throughout instruction should be included in curricular materials. 4. Related skills (e.g., phonemic awareness, spelling) should be correlated, and connections should be made in instructional materials and instruction. 5. Decodable texts should be provided as an intervening step between explicit skill acquisition and the student's ability to read quality trade books. Decodable texts should contain the phonics elements with which students are familiar. However, the text should be unfamiliar to the student because the student should apply word-analysis skills, not reconstruct text already memorized. <p>The second-grade curriculum and instruction should emphasize increasing students' facility with the alphabetic writing system and with larger and more complex units of text and on applying knowledge of letter-sound correspondences to decode unfamiliar words.</p> <p>Further efforts should be made to help students link phonemic awareness of words and knowledge of letter-sounds to build lexicons of familiar words; use knowledge of spelling patterns, prefixes, and suffixes; and increase sight vocabulary through extensive practice. Adequate initial reading instruction requires that students use reading to obtain meaning from print and have frequent opportunities to read.</p>
138	107	EL/All	ELD
139	114	EL/All	ELD
140	114	EL/All	ELD
141	114	EL/All	ELD

142	114	EL/All	ELD	Listening comprehension and speaking expectations increase as second graders learn to paraphrase, clarify, explain, and report on information they hear, experience, and read.
143	115	EL/All	ELD	Development of word-analysis and word-recognition skills in the second grade proceeds systematically, building on first-grade skills and extending those fundamental understandings purposefully and interdependently.
144	115-116	EL/All	ELD	Instruction should carefully sequence the introduction of new skills and strategies. If students lack proficiency in prerequisite skills, those skills must be taught before more advanced word structures are presented.
145	116	EL/All	ELD	Redundancy in letter sounds and orthographic units in words allows students to process words more efficiently. They learn to read phonetically regular words more fluently as they become familiar and facile with chunks of text
146	116	EL/All	ELD	Students in the second grade should also continue instruction and practice in learning reliable rules to assist in decoding. For example, learning that an <i>e</i> at the end of a word usually causes the medial vowel to be long (or say its name) is a rule that advances word-analysis skills. A primary goal of second-grade word-analysis instruction is to increase systematically students' ability to read words because of their knowledge of more complex spelling patterns.
147	116-117	EL/All	ELD	Another essential component of fluency development is the opportunity for students to practice unfamiliar words many times in text, allowing them to use their decoding skills with a high degree of success. Text that students practice should be at their instructional level, with no more than one in ten words read inaccurately.
148	117-118	EL/All	ELD	Advanced instruction in decoding is more effective if it relies on the following principles of design and delivery Suggested procedures to follow are to:
				• Teach the advanced phonic-analysis skills as explicitly as was done for the earlier letter-sound correspondences: first in isolation, then in words and connected text, and, when the students become proficient, in trade books.
				• Avoid assuming that learners will automatically transfer skills from one word type to another. When introducing a new letter combination, prefix, or word ending, model each of the fundamental stages (e.g., letter-combination, prefixes), blending the word and then reading the whole word.
				• Separate auditorily and visually similar letter combinations in the instructional sequence (e.g., do not introduce both sounds for <i>oo</i> simultaneously; separate <i>ai</i> , <i>au</i>).
				• Sequence words and sentences strategically to incorporate known phonics units (e.g., letter combinations, inflectional endings).
				• Ensure that students know the sounds of the individual letters prior to introducing larger orthographic units (e.g., <i>ill</i> , <i>ap</i> , <i>ing</i>).
				• Provide initial practice in controlled contexts in which students can apply newly learned skills successfully.
				• Offer repeated opportunities for students to read words in contexts where they can apply their advanced phonics skills with a high level of success.
				• Use decodable text, if needed, as an intervening step between explicit skill acquisition and the student's ability to read quality trade books.
				• Incorporate spelling to reinforce word analysis. After students can read words, provide explicit instruction in

				<p>spelling, showing students how to map the sounds of letters onto print.</p> <ul style="list-style-type: none"> • Make clear the connections between decoding (symbol to sound) and spelling (sound to symbol). At this point students have three powerful tools to facilitate word learning: ability to hear sounds in words, knowledge of the individual letter sounds or letter-sound combinations, and knowledge of the letters. Teach and remind students to rely on those skills and strategies when they encounter unfamiliar words or need to spell a word. However, ensure that students understand that some words are not spelled as they sound. The spelling of those words must be memorized at this stage. • Teach decoding strategies initially, using words with meanings familiar to students.
149	118	EL/AII	ELD	<p><i>Multisyllabic word reading.</i> As students progress in word-analysis skills, they encounter more complex words, particularly words with more than one syllable. In the second grade students learn the rules of syllabication. Two strategies aid multisyllabic word recognition—breaking the word into syllables and learning prefixes and suffixes.</p> <p><i>Sight-word reading.</i> Second-grade word-analysis instruction must systematically teach children sight-word recognition of high-frequency words. When sight words (high-frequency irregular words) are being taught, it is important for the teacher to:</p> <ol style="list-style-type: none"> 1. Select words that have high utility; that is, words that are used frequently in grade-appropriate literature and informational text. 2. Sequence high-frequency irregular words to avoid potential confusion. For example, high-frequency words that are often confused by students should be strategically separated for initial instruction. 3. Limit the number of sight words introduced at one time (five to seven new words). 4. Preteach the sight words prior to reading connected text. 5. Provide a cumulative review of important high-frequency sight words as part of daily reading instruction (two to three minutes)
150	118-119	EL/AII	ELD	
151	119	EL/AII	ELD	<p>In the second grade curriculum and instruction extend the understanding of concepts and vocabulary in four primary ways:</p> <ul style="list-style-type: none"> • Knowledge and use of antonyms and synonyms • Use of individual words in compounds to predict the meaning • Use of prefixes and suffixes to assist in word meaning • Learning multiple-meaning words
152	119	EL/AII	ELD	<p>Two emphases in vocabulary development initiated in kindergarten should carry through into the second grade: (1) direct instruction of specific concepts and vocabulary essential to understanding text; and (2) exposure to a broad and diverse vocabulary through listening to and reading stories and informational texts.</p>
153	120	EL/AII	ELD	<p>Of the new vocabulary skills introduced in the second grade, the use of prefixes and suffixes to aid in word meaning is a skill that students may use frequently as they read more complex and challenging texts. When teaching prefixes and suffixes to assist in word meaning, teachers should emphasize those that occur with the greatest frequency in second-grade material. Prefixes and suffixes that are most useful in understanding word meaning should be introduced before less useful ones.</p>
154	120	EL/AII	ELD	<p>In presenting instruction in prefixes and suffixes, the teacher should:</p> <ol style="list-style-type: none"> 1. Introduce the prefix or suffix in isolation, indicating its meaning and then connecting it in words.

				<p>2. Illustrate the prefix or suffix with multiple examples.</p> <p>3. Use examples when the roots are familiar to students (e.g., <i>remake</i> and <i>replay</i> as opposed to <i>record</i> and <i>recode</i>) (Cunningham, 1998).</p> <p>4. Integrate words into sentences and ask students to tell the meaning of the word in the sentence.</p> <p>5. Review previously introduced words cumulatively.</p> <p>6. Separate prefixes that appear similar in initial instructional sequences (e.g., <i>pre</i>, <i>pro</i>).</p>
155	121	EL/All	ELD	<p>Given the great number of comprehension skills and strategies to be learned, instruction should be organized in a coherent structure. A question that might be asked here is, Which skills and strategies should be used during prereading, reading, and postreading?</p> <p>When the second-grade standards are considered in conjunction with the big picture of instruction in reading comprehension, it is important to recognize that such instruction consists of three phases. In the <i>acquisition phase</i> the skill or strategy is taught explicitly with the aid of carefully designed examples and practice. This phase may consist of one or more days depending on the skill or strategy being taught. The <i>focused application phase</i> should continue across several instructional sessions to illustrate the applicability and utility of the skill or strategy. The <i>strategic integration phase</i>, occurring over the course of the year, is designed to connect previously taught skills and strategies with new content and text.</p>
156	121	EL/All	ELD	<p>Curriculum and instruction should cumulatively build a repertoire of skills and strategies that are introduced, applied, and integrated with appropriate texts and for authentic purposes over the course of the year. As students begin to develop reading-comprehension skills, effective teachers foster interest and motivation to read and assist students in developing an appreciation of the rewards and joys of reading.</p>
157	121	EL/All	ELD	<p>...students read versions of stories written by different authors to gain an understanding of the influence of the writer and the culture.</p>
158	121	EL/All	ELD	<p>They use the narrative text structure to write brief narratives (Writing Applications Standard 2.1) and retell stories (Listening and Speaking Standard 2.1). Emphasis on comprehension is centered on teaching students to analyze narratives, compare and contrast, and generate alternative endings. The connections with the listening, speaking, and writing domains are clear in this strand. Instructional effectiveness and efficiency can be gained by employing inherent connections in content.</p>
159	121-122	EL/All	ELD	<p>In the second grade writing progresses to narratives in which students move through a logical sequence of events. The narrative structure and requirements expand in the second grade to multiple paragraphs that integrate knowledge of setting, characters, objectives, and events to develop more complex and complete narratives. In addition, second graders learn an additional text structure, the friendly letter, as a form of written communication.</p>
160	122	EL/All	ELD	<p>Concurrently, they require instruction in distinguishing between complete and incomplete sentences, extending grammatical proficiency with parts of speech, applying correct capitalization and punctuation, and expanding their repertoire of correctly spelled words. Spelling instruction progresses to include inflected endings and irregular or exception words (e.g., <i>said</i>, <i>who</i>, <i>what</i>, <i>why</i>).</p>
161	122	EL/All	ELD	<p>The instructional guidelines for systematic instruction introduced in the first grade are equally important in the second grade. They consist of small sets of words that are introduced explicitly, reviewed frequently, and integrated into writing exercises.</p>
162	123	EL/All	ELD	
163	123	EL/All	ELD	

164	123-124	EL/All	ELD	<p>In instruction according to strands, incremental and progressive skills and strategies within and across a range of strands related to a larger domain are introduced and learned to provide a precise, coherent course of study. Such instruction, both specific and related, which focuses on specific skills and strategies and incorporates them into exercises once learners are proficient with individual skills, is especially appropriate for writing. Features of this instruction are as follows:</p> <ol style="list-style-type: none"> 1. Dimensions of a complex task are analyzed, and the strands are identified (e.g., organization, grammar, sentence structure, and stages of writing). 2. Specific objectives within a strand are identified and sequenced individually. 3. Cross-strand skills are integrated once learners are proficient in individual strand skills and strategies. 4. Previously taught skills and strategies are reviewed cumulatively. 5. The instructional analysis of the content and proficiency of the learner will prescribe the length of the instructional sequence.
165	124	EL/All	ELD	<p>In the second grade the students' proficiency in speaking and listening expands quantitatively and qualitatively. The students are responsible for comprehending larger amounts of information presented orally (e.g., three- to four-step instructions) and for communicating their ideas with increased attention to detail and substance (e.g., reporting on a topic with supportive facts and details). Speaking strategies are applied in two primary formats—recounting experiences or stories and reporting on a topic with facts and details.</p>
166	124-125	EL/All	ELD	<p>Instruction to prepare students to recall stories or experiences or to report on a topic should proceed from (1) the reading of text for which students know the elements (e.g., characters, setting, problem, important events, resolution to the problem, conclusion); to (2) the identification of those elements in stories and topics; and (3) the production or generation of the elements.</p>
167	125	EL/All	ELD	<p>Students should be introduced to the simple strategy of organizing both narrative and expository texts chronologically.</p> <p>The following activities integrate standards across domains, strands, and academic disciplines. Teachers may wish to:</p> <ol style="list-style-type: none"> 1. Reinforce the connections between phonemic awareness (hearing the sounds in words), phonological recoding (translating a printed word into its letter-sound correspondences), and translating sounds into print (spelling). 2. Extend the words that students can read (e.g., special vowel spellings, plurals) into their spelling and writing. 3. Incorporate words taken from vocabulary instruction (e.g., synonyms, words with prefixes) into exercises providing systematic opportunities to use words in sentences throughout the day. 4. Incorporate comprehension strategies into other content areas (e.g., reading a science textbook when appropriate) and practice those strategies. 5. Use story grammar elements as a common structure for comprehending, retelling, and composing stories. 6. Select appropriate content standards in science, mathematics, and history-social science to address within the instructional time allotted for instruction in the language arts. <p>Please see Appendix B for examples of standards that span domains and strands.</p>
168	125-126	EL/All	ELD	
169	128-129	EL/All	ELD	<p>Comparing and contrasting textual elements involve a host of factors that make this task either manageable or extraordinarily difficult. Initial instruction is likely to be most effective and efficient if it adheres to the</p>

			<p>following guidelines. Teachers may wish to:</p> <ol style="list-style-type: none"> 1. Begin with a review and practice of identifying story grammar elements (e.g., setting, characters, problems, attempts to solve the problem or sequence of events, and resolution of the problem or conclusion). 2. Support readers' identification of story grammar elements with a think sheet or story note sheet that outlines the elements students should identify. 3. Select stories with parallel structures that adhere to conventional story lines. 4. Use stories in which elements are explicit and clearly identifiable. 5. Do not proceed to a comparison and contrast analysis until students can identify elements of individual stories reliably. (Provide additional practice if necessary.) 6. Model how to compare and contrast explicitly, focusing on specific elements. 7. Begin with an oral comparison and contrast analysis. Have the students read the same story as a group and use a comparison and contrast version of the story grammar elements to indicate whether elements are the same or different. 8. Include stories in which some elements are comparable and some are different. 9. Begin with shorter stories and proceed to longer ones. 10. Use stories with largely familiar vocabulary. Stories that are not presented orally should be within the readability level of students. 11. Support learners in initial analyses by providing a concrete, overt strategy for comparing and contrasting elements that designates similarities and differences. 12. Provide sufficient practice in both components of instruction: (a) identifying elements; and (b) comparing and contrasting elements between and among stories. <p>Comparison and Contrast Analysis...</p> <p>Instructional Delivery</p> <ol style="list-style-type: none"> 1. Begin the instructional sequence with a review of the elements of an individual story in which the students identify setting, characters, problems, attempts to solve the problem or sequence of events, and resolution of the problem or conclusion. One of the stories should be included in the subsequent comparison and contrast analysis. 2. Identify explicitly for the students the critical elements; that is, read a section of the story and talk students through the process of identifying individual elements (see the previous description). If the students have difficulty with specific elements, provide further practice with additional stories. 3. Follow up teacher-directed identification of the elements with guided practice during which the students (as a whole class or in respective reading groups) identify the elements with the teacher's assistance. 4. Conclude this segment of instruction with independent practice. Students should use story note sheets or summary sheets to identify the elements of a story. 5. Model the process of comparing and contrasting story elements by using a structured tool. Walk students through the comparison and contrast process, thinking out loud as you model. (For example, "In <i>Peter Rabbit</i> the story takes place in a small garden in the country. In <i>Curious George</i> the story takes place in a busy city. The settings of these stories are different.") Continue modeling through all the elements in the story. 6. Explain the steps in the strategy: "When you read stories, they often have the same parts or elements. We are going to look at those parts to see how the stories are the same and how they are different." 7. Model multiple examples.
170	129-131	EL/All	ELD

				<p>8. Guide students through the process of using the story elements to compare and contrast stories, using questions: “Where do these stories take place? Who are the characters? How are they the same? How are they different?” Provide corrective feedback. In this phase decrease prompts and assign greater responsibility to students.</p> <p>9. Test students, using the same text format as in the teaching sequences. Do so immediately after the last teaching example to determine whether the students have acquired the strategy.</p> <p>10. If students cannot use the strategy to compare and contrast story elements, analyze their responses to determine (1) whether the difficulties are specific to certain elements or are more generic; or (2) whether the difficulties are specific to certain students. Provide appropriate instruction and practice.</p> <p>11. Present additional examples to assess student understanding.</p>
171	131	EL/All/Differentiated Instruction	ELD	<p><i>Entry-Level Assessment for Instructional Planning</i></p> <p>a. The most important entry-level assessment information for this standard is the extent to which students are already familiar with the elements of stories. The most direct assessment is for students to read a story and identify the elements either in response to a list of elements or on their own.</p> <p>b. Determine whether further instruction is needed in the identification of the basic elements of story grammar.</p>
172	131	EL/All/Differentiated Instruction	ELD	<p><i>Monitoring Student Progress Toward the Instructional Objective. This assessment phase is designed to determine the effectiveness of instruction and students’ mastery of what has been taught.</i> By designing tasks that align with the sequence of instruction, student performance can be used to determine whether to proceed to the next phase of instruction or to conduct further instruction and practice at the current phase.</p>
173	131	EL/All/Differentiated Instruction	ELD	<p><i>Post-test Assessment Toward the Standard.</i> Analyzing stories by comparing and contrasting critical elements is a strategy that begins in the second grade and continues for many grades. This strategy should not be seen as a discrete skill that is taught and assessed at one time of the year. Narrative analysis should be distributed throughout the second grade to assess students’ retention of the skill and to demonstrate the broad utility of the strategy. Published materials should emphasize this strategy and distribute its use across literature read in the second grade.</p>
174	132	EL/All/Differentiated Instruction	ELD	<p><i>Students with Reading Difficulties or Disabilities</i></p> <p>a. Students reading below grade level will require reading selections taken from below-grade-level literature. At this stage the goal is for students to learn the elements of story grammar and the comparison and contrast analysis strategy. This strategy can be introduced, discussed, and applied to stories that are read aloud to students. They can then use the analysis strategies with texts they read on their own.</p> <p>b. Students with disabilities or learning difficulties may need more extensive instruction in comparison and contrast. Materials should include examples of elements easily identifiable for basic comparison and contrast exercises.</p> <p>c. Students may need scaffolded story sheets that not only identify the story grammar elements, such as setting or resolution, but also define setting—where and when the story takes place; and resolution—how the problem was solved.</p> <p>d. Instructional materials should provide a range of examples to allow more extensive practice.</p>
175	133-135	EL/Differentiated Instruction	ELD	<p><i>Students Who Are English Learners</i></p> <p>a. Through carefully designed instruction students should learn the process of identifying elements of stories</p>

			<p>and comparing and contrasting those elements. For students whose primary language is not English (English learners), a foremost problem can be the vocabulary used in the stories. The concepts and vocabulary may require more extensive development than is necessary for other students.</p> <p>English learners can be helped to develop vocabulary through preteaching; providing vocabulary instruction; modeling the pronunciation of words; scaffolding (e.g., through summary sheets, visuals, realia, and compare and contrast sheets); and encouraging the students to use the vocabulary from the stories in class discussions and writing assignments. These students should learn more than the meaning of words. To accomplish grade-level objectives, they need to know how to use in their writing the words they have learned. To do so, they must learn the grammatical rules governing the use of words. When teaching words, the teacher should make sure to provide students with numerous examples of sentences containing the words, encourage them to use words in their speech and writing, and provide corrective feedback when appropriate.</p> <p>b. English learners may require more extensive instruction in comparison and contrast. Resources should include explicit instruction in words and expressions used to compare and contrast ("In comparison with . . . , <i>X</i> is different from <i>Y</i> because . . . ; both <i>X</i> and <i>Y</i> have a similar setting").</p> <p>c. English learners benefit from extensive exposure to narrative models, comparison and contrast analyses, and multiple opportunities to use story elements to compare and contrast stories.</p> <p>d. The teacher should select some texts that children of diverse cultures can relate to easily. Whenever possible, the texts should be authentic. Simplified texts should be used only with students with weak proficiency in English. Students who use the simplified texts need intensive English-language instruction to enable them to catch up with their peers.</p>
176	135	EL/All/Differentiated Instruction	<p>Instructional Materials</p> <ol style="list-style-type: none"> 1. Instructional materials should contain explicit instruction in strategies for comparing and contrasting stories. Enough selections should be made available at each level of instruction to ensure student mastery of the strategy. 2. Texts should be carefully selected and should contain critical features, including explicitness of the elements, length, familiarity of vocabulary, and readability. 3. Materials should include a range of selections and a corresponding set of assessment tasks to evaluate student performance at each stage of learning. 4. Materials should further include reproducible scaffolds or supports for students, including summary sheets that outline the story grammar elements and grids that use story grammar elements for comparison and contrast. <p>The curriculum and instruction offered in the third grade should enable students to (1) read grade-level fiction and nonfiction materials independently with literal and inferential comprehension; (2) develop a knowledge of common spelling patterns, roots, and affixes; (3) use conventions of spelling and conventions of print (e.g., paragraphs, end-sentence punctuation); (4) clarify new words, make predictions, and summarize reading passages; (5) answer questions that require analysis, synthesis, and evaluation of grade-level narrative and informational text; and (6) support answers to questions about what they have read by drawing on background knowledge and specific details from the text.</p>
177	143	EL/All	<p>ELD</p>

178	143	EL/All	ELD	<p>The third grade is often considered the last period of formal instruction in decoding for students who still need it, although they continue to recognize new words beyond this grade level. At the end of this pivotal year, instruction in phonics is phased out from the formal curriculum as a focal point for students who have learned to decode. Increased and extended emphasis is placed on vocabulary acquisition, comprehension strategies, text analysis, and writing. Students are also taught to use context as an independent vocabulary strategy.</p> <p>Specific decoding instruction in the earlier grades and redundancy of exposure through repeated practice have developed a stable and reliable strategy for analyzing words. As with earlier instruction in decoding and word recognition, students will need explicit instruction for word families (phonograms). Many of the same principles for selecting and sequencing instruction in the early grades apply here: (1) separating word parts that are highly similar (e.g., <i>ight</i> and <i>ight</i>); (2) introducing word parts that occur with high frequency over those that occur in only a few words; and (3) teaching the word parts first and then incorporating the words into sentences and connected text.</p>
179	144	EL/All	ELD	<p>The word-recognition substrand in the third grade emphasizes reading harder and bigger words (i.e., multisyllabic words) and reading all words more fluently. Students further their word-analysis and fluency skills through instruction centered on orthographically larger and more complex units (e.g., <i>ight</i>, <i>ought</i>, <i>own</i>). They may learn to apply the orthographic unit <i>ight</i> first in such simple words as (pl)<i>ight</i>, (m)<i>ight</i>, and (sl)<i>ight</i>. When students are successful in reading simpler words with <i>ight</i>, word analysis should be extended to more complex words in which <i>ight</i> occurs in different positions (e.g., <i>lightning</i>, <i>overnight</i>, <i>brightness</i>, <i>forthright</i>, <i>delight</i>, and <i>knight</i>).</p>
180	145	EL/All	ELD	<p>In the third grade students will also need to learn strategies to decode multisyllabic words. They can be taught to use the structural features of such word parts as affixes (e.g., <i>pre-</i>, <i>mis-</i>, <i>-tion</i>) to aid in word recognition. Economy can be achieved by teaching both the word part (e.g., <i>un</i>) and its meaning (<i>not</i>), then applying the strategy to words that follow the rules. In this structural analysis of the word, students are taught to look for the affix(es) and then find the root or base word.</p>
181	145	EL/All	ELD	<p>Guidelines for reading big or multisyllabic words...call for:</p> <ol style="list-style-type: none"> 1. Providing explicit explanations, including modeling, "think-alouds," guided practice, and the gradual transfer of responsibility to students 2. Relying on examples more than abstract rules (Begin with familiar words. Show "nonexamples." Use word parts rather than have students search for little words within a word. <i>Examples:</i> depart, report.) 3. Teaching what is most useful 4. Making clear the limitations of structural analysis 5. Using extended text in opportunities for application
182	145	EL/All	ELD	<p>...a model for reading big words that combines reading, meaning, and spelling and extends the steps by teaching (1) prefixes that are useful from a meaning standpoint (e.g., <i>re-</i>); (2) suffixes that are most useful (e.g., <i>-ly</i>, <i>-er</i>, <i>-ful</i>); and (3) a few useful roots (e.g., <i>play</i>, <i>work</i>, <i>agree</i>). Students are also taught to spell words that have high utility for meaning, spelling, and decoding.</p>
183	146	EL/All	ELD	<p>In addition to being taught structural analysis, students should be taught strategies to confirm the fit of the word in context. Although contextual analysis has limited usefulness as a single word-recognition strategy, it expands students' capacity for word analysis and recognition when used to confirm the accuracy of words identified by decoding and structural analysis. Words identified through the decoding of letter sounds or letter</p>
184	146	EL/All	ELD	

				combinations are followed by recognition of larger units of words , including onsets and rimes and common word parts, such as prefixes and suffixes . After decoding and structural analysis have occurred, contextual analysis can be used to verify the accuracy and fit of the word in the sentence.
185	146-147	EL/All	ELD	Extended word-analysis skills and ample opportunities to practice skills in connected text should enable third-grade students to read grade-appropriate text accurately and fluently. ... As students learn to recognize words automatically, they should have opportunities to hear and practice reading text aloud, emphasizing pacing, intonation, and expression. Fluency or facility with print frees up cognitive resources for comprehension. Students in the third grade further their knowledge of vocabulary in significant ways, primarily through independent reading but also through independent vocabulary-learning strategies. In addition to direct instruction in synonyms, antonyms , and so on and explicit strategies for teaching the hierarchical relationship among words (e.g., living things/animal/mammal/dog), students are introduced to two strategies for independent learning of vocabulary . The first strategy is to learn to use the dictionary to understand the meaning of unknown words—a complex task with special constraints for third graders. ... A second independent vocabulary strategy introduced in the third grade is using context to gain the meaning of an unfamiliar word . Because not all contexts are created equal, however, initial instruction must be designed carefully to enable learners to acquire this important vocabulary strategy . Students should learn to use context effectively because most word meanings are learned from context. The third-grade curricular and instructional profile focuses on that strategy. In addition to the independent word-learning strategies, the third-grade curricula and instruction extend the understanding of concepts and vocabulary of the English language through (1) learning and using antonyms and synonyms; (2) using individual words in compound words to predict the meaning; (3) using prefixes and suffixes to assist in word meaning; and (4) learning simple multiple-meaning words .
186	147	EL/All	ELD	
187	147-148	EL/All	ELD	
188	148-149	EL/All	ELD	In the third grade emphasis is placed on narrative and expository texts and literal and inferential comprehension . Third-grade students expand comprehension skills and strategies by: <ul style="list-style-type: none"> • Using conventions of informational text (e.g., titles, chapter headings, glossaries) to locate important information • Using prior knowledge to ask questions, make connections, and support answers • Recalling major points in text and modifying predictions • Recalling main ideas from expository text • Demonstrating comprehension by identifying answers in the text • Extracting information from text • Following simple, multiple-step instructions A major advancement in comprehension for the third grade focuses on identifying and recalling the main idea and supporting details of expository texts . In writing there is a related standard (Writing Standard 1.1) according to which students write paragraphs that include topic sentences (i.e., main ideas) and supporting facts and details . Expository text is typically more difficult to comprehend than narrative text. The ability to comprehend expository text is essential for achievement in school, especially in the later elementary grades and in the middle school years.
189	149	EL/All	ELD	
190	149	EL/All	ELD	Successful instruction in complex comprehension strategies , such as finding the main idea, depends largely on the design of the information taught . Well-designed text enables readers to identify relevant information,

198	151-152	EL/All	ELD	<p>subject-verb agreement and use of the tense, are the focus of third-grade instruction, along with continued development in capitalization, punctuation, and spelling.</p> <p>As students learn to read words with double consonants, inflected endings, y-derivatives (e.g., <i>baby/ies</i>), and so forth, they are ready to learn to spell the words. Guidelines outlined in the first grade for spelling instruction are applicable in this grade. Homophones (i.e., words that sound alike but have different spellings and meanings: <i>their, there</i>, and <i>they're</i>) pose particular spelling problems. Homophones should be introduced a few at a time. It is recommended that a single homophone be introduced first. After mastery of that homophone, another may be presented. Once both homophones are mastered, they may be used in discrimination exercises in which meaning and context are emphasized.</p>
199	152	EL/All	ELD	<p>In practice students apply those strategies and conventions as they learn and extend proficiency in writing narratives, descriptions, and personal and formal correspondence. This strategic integration of skills, strategies, and structures requires (1) explicit instruction in each of the individual components (e.g., sentence types, writing of paragraphs, use of tense); and (2) systematic connections of components to demonstrate the utility of the individual parts and communicate to students the big picture of writing. A common flaw in instructional materials is that they often fail to make the important connections for students. For example, students may learn to write declarative sentences but do not practice them or integrate them into other writing activities. Similarly, if students practice writing sentences with correct punctuation and capitalization but never apply the skills in larger contexts or for authentic purposes, instruction is fragmented. The skills are seemingly without purpose.</p>
200	153	EL/All	ELD	<p>The goal in writing instruction must, therefore, be to ensure that component parts (skills, strategies, structures) are (1) identified; (2) carefully sequenced according to their complexity and use in more advanced writing applications; (3) developed to mastery; and (4) progressively and purposefully connected within and across content standards in the four academic areas and then incorporated into authentic writing exercises.</p>
201	153	EL/All	ELD	<p>In the third grade emphasis is placed on listening and speaking strategies and on speaking applications. Fourteen standards signify the importance of students' speaking and listening development, the amount and type of information they should comprehend, and the formats and methods they should use to communicate their knowledge and ideas.</p>
202	153-154	EL/All	ELD	<p>The connections across the language arts domains (reading, writing, listening, and speaking) have been stressed in other sections of this framework but bear repeating because they have particular significance for developing students' speaking and listening skills. Just as students need structures, maps, or anchors to facilitate their understanding of narrative or expository text, they will require the same types of supporting structures when learning what to listen for and what to speak about. Simplistic as it may seem, students may not know what to include when summarizing (e.g., organizing descriptions or sequencing events). The parallels of the structures students learn in reading and writing apply directly to the goals of listening and speaking, and those connections require explicit, carefully designed instruction. The benefits of earlier teaching should be readily apparent because students already know the elements of stories, descriptions, and sequences of events from previous instruction in reading and writing.</p>
203	154	EL/All	ELD	<p>It is typically easier to retell than to create and easier to comprehend than to compose. Therefore, instructional materials and instruction should honor those inherent complexities and ensure that students first</p>

				have opportunities to listen to and read narratives, descriptives, and sequences of events before being asked to write and orally present narratives, descriptives, and sequences of events. Instructional design must address further (1) the length of the information to be listened to or spoken; (2) familiarity with the topic; (3) familiarity with the vocabulary; and (4) syntactical complexity of the information.
204	154	EL/All	ELD	Initial listening and speaking applications should be shorter in length, should be centered on more familiar topics, and should be less complex syntactically. The following activities integrate standards across domains, strands, and academic disciplines. Teachers may wish to: 1. Reinforce the connections between decoding, word recognition, spelling, and writing. Word families, multisyllabic words, and structural units (e.g., prefixes) that students learn to read should be incorporated into spelling and writing instruction and practice. 2. Incorporate words or word parts from vocabulary instruction (e.g., prefixes, synonyms) in systematic opportunities that use those words in sentences. Practice throughout the day and over a period of time. 3. Make connections between structures used for comprehension and composition. Demonstrate how text structures can be used across domains to enhance recall and composition. 4. Teach rules that generalize across reading materials and make explicit the connections of their use in a variety of subject areas (e.g., use context to help learn the meanings of words you do not know). 5. Make connections by incorporating and reinforcing specific skills and conventions (e.g., grammar, main idea, sentence types) across all writing assignments and exercises. 6. Select appropriate content standards for science, mathematics, and history—social science to address within language arts instructional time.
205	154-155	EL/All	ELD	
206	156	EL/All	ELD	When given a text (sentence or sentences) with unfamiliar vocabulary used in close proximity, students should first decode the word and then use the context to determine the word meaning. Learning words from context involves a range of variables that enhance or impede the success of the strategy, including the student's previous knowledge about the subject matter, the proximity of other words in the passage that may serve as clues, and the difficulty of the reading selection. Successful learning from context depends largely on practice. Teachers can teach this strategy through: 1. Systematic selection and sequencing of examples (contexts) 2. Progression of context difficulty from shorter passages (e.g., 40 to 60 words with two or three unfamiliar words) to longer ones (e.g., 80 to 100 words with five or six unfamiliar words) 3. Explicit instruction and modeling in how to use context to learn word meaning
207	157	EL/All	ELD	Contexts for Initial Instruction: 1. Unfamiliar words are limited to a manageable number (one every two to three sentences). 2. Unfamiliar words are kept within the students' readability level. 3. Contexts focus on a familiar topic. 4. Contexts include a range of examples in which new vocabulary is accessible through surrounding context and a few examples in which a dictionary must be used. 5. Contexts focus on vocabulary of high utility.
208	157	EL/All	ELD	
209	157-158	EL/All	ELD	Instructional Delivery 1. Model the process of using context to learn new word meanings. Think out loud as you model: "I don't

			<p>know the meaning of this word. I'll read the words around it to see if they help me." Show the conventions used to define new words (e.g., appositives).</p> <p>2. Model multiple positive and negative examples (i.e., vocabulary for which the context does or does not provide meaning). Show students how to use a dictionary in the latter case.</p> <p>3. Invite students to suggest which other words or passages provide clues to the meaning of the unfamiliar word.</p> <p>4. Ask students to suggest synonyms for the unknown word and substitute the synonyms to see whether the meaning of the sentence changes or remains the same.</p> <p>5. Guide students through the process of using the context to learn new word meanings. Provide corrective feedback.</p>
210	158	EL/All/Differentiated Instruction	ELD
211	158	EL/All/Differentiated Instruction	ELD
212	158	EL/All/Differentiated Instruction	ELD
213	159	EL/All/Differentiated Instruction	ELD
214	160-161	EL/Differentiated Instruction	ELD

				<p>time they are acquiring the meaning of the words. To teach students the rules, teachers need to provide students with explicit instruction, model the words in speech and writing, encourage students to use words in sentences and in longer text, and provide students with corrective feedback on their use of words.</p> <p>c. Curricular materials should provide English learners with additional opportunities to read texts that contain similar vocabulary words and grammatical structures so that students are repeatedly exposed to new words and structures. Some texts should be relevant to the interests and needs of English learners from diverse cultures.</p>
215	161	EL/All	ELD	<p>Instructional Materials</p> <ol style="list-style-type: none"> 1. Texts should contain explicit instruction strategies for identifying words from near-proximity contexts and far-proximity contexts. Sufficient examples of each type should be provided to ensure student mastery of the strategy. 2. Texts should be carefully selected and designed according to critical features, including proximity of the defining context, number of unfamiliar word meanings, richness of the context, readability of the text, text length, and syntactical complexity. 3. Measures for conducting assessment at the entry level and throughout the period of instruction must be included in the curricular materials.

CHAPTER 4: CONTENT STANDARDS AND INSTRUCTIONAL PRACTICES GRADES FOUR THROUGH EIGHT

Citation Number	Page Number	English Learner/ All Students/ Differentiated Instruction References	English Language Development/ Academic Language References	Reading/Language Arts Framework Text Language:
216	175	EL/All	ELD/Academic Language	A primary focus in grades four through eight is having students learn words and concepts (Beck, McKeown, and Kucan, 2002; Ehri, 2002; Stahl and Nagy, 2000). Students study the origins, derivations, and use of words over time and in different types of text.
217	175	EL/All	ELD/Academic Language	... many children need direct instruction in word-learning strategies to develop their vocabularies and enhance their ability to learn new words
218	176	EL/All/Differentiated Instruction	ELD/Academic Language	Access to outstanding age-appropriate multicultural literature as well as a variety of print and electronic informational materials in school and in public libraries is important for all students, particularly for those who do not have reading material at home.
219	176	EL/All	ELD/Academic Language	... Speaking applications that require students to deliver well-organized formal presentations employing traditional rhetorical strategies...
220	178	EL/All/Differentiated Instruction	ELD/Academic Language	... strategic interventions ... must be made to alter the learning patterns of students who have not yet learned to read...
221	178	EL/All/Differentiated Instruction	ELD/Academic Language	Monitor student progress and adjust the instruction and time allocations accordingly. The proficiency of all students in the fundamental areas of reading, including word recognition, fluency, academic language, and comprehension strategies, must be determined.
222	179	EL/All/Differentiated Instruction	ELD	The proficiency of all students in the fundamental areas of reading, including word recognition, fluency, academic language, and comprehension strategies, must be determined .
223	182	EL/All/Differentiated Instruction	ELD/Academic Language	Although the standards emphasize the use of external context cues at earlier grade levels, emphasis shifts strategically in the fourth grade (and continues through the tenth grade) to the use of internal, morphological, etymological, and historical word . Knowledge of affixes and roots —their meanings and origins—should be limited to the most common (and useful) morphological components ; that is, those immediately applicable to the students' current level of vocabulary acquisition .
224	182	EL/All	ELD/Academic Language	... target synonyms, antonyms, idioms, and words with multiple meanings (the vast majority of nontechnical words in English). Students should be required to use a dictionary and a thesaurus to determine related words and concepts. Instruction in new conceptual knowledge should include clear examples in addition to verbal definitions of words .
225	183	EL/All	ELD/Academic Language	Ensure multiple exposures to unfamiliar vocabulary words Teach students vocabulary-learning strategies for use during independent reading.
226	185	EL/All/Differentiated Instruction	ELD/Academic Language	Providing explicit and guided instruction during the initial phases of learning and ensure that students are provided with the appropriate instructional supports (e.g., a think sheet or note sheet for the particular type of text) during initial opportunities for independent reading.

Draft: *Reading Language Arts Framework*

References to English learners, English language development, in differentiated instruction/Universal access for all students

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227	187	EL/All/Differentiated Instruction	ELD/Academic Language	...Devoting extensive time and presenting multiple opportunities for students to develop proficiency with each form of writing.
228	187	EL/All/Differentiated Instruction	ELD/Academic Language	... correct use of mechanics and the conventions of oral and written discourse continues to be emphasized at this level.
229	188	EL/All	ELD	...students should... listen critically and respond appropriately to oral communications .
230	189	EL/All	ELD	... use speaking strategies to make narrative and informational presentations.
231	199	EL/All/Differentiated Instruction	ELD/Academic Language	Passages should be appropriate to the instructional reading levels of students teachers may need to use supplementary examples from the instructional resources designed for universal access. The examples control more carefully the amount and type of information to be added or deleted.
232	200	EL/Differentiated Instruction	ELD/Academic Language	English learners can learn to add and delete text well without developing knowledge of the rhetorical devices that enable them to write cohesive, coherent text. To help English learners achieve Writing Standard 1.10, provide them with specific, explicit instruction concerning transition phrases (e.g., <i>first, second, third, next, in conclusion</i>) and pronoun reference (e.g., <i>he, she, it, they</i>). Cohesive devices (such as transition phrases and pronouns), which are often used differently in the students' first languages, are useful in establishing cohesive, coherent texts . <i>Note:</i> Many Asian students use full noun phrases to establish cohesion instead of the pronouns used by native English speakers.
233	200	EL/Differentiated Instruction	ELD/Academic Language	English learners benefit greatly from sentence-combining exercises . They need extensive guidance and practice in using such grammatical structures as relative clauses (e.g., <i>I like the man who lives on the corner</i>); conditional statements (e.g., <i>If I were you, I would not do that</i>); and subordinate clauses (e.g., <i>She received good grades because she worked hard</i>).
234	200	EL/Differentiated Instruction	ELD/Academic Language	Because English learners are still developing proficiency in English, care should be taken in organizing peer revision and peer editing . Individual students should receive feedback from the teacher on their writing and any grammatical or other errors they have made. Errors in grammar or other mistakes common to many students in the class should be the subject of additional classroom instruction and practice.
235	200	EL/Differentiated Instruction	ELD/Academic Language	In an English-language mainstream classroom, it is important to group English learners with students proficient in English . When to do so is impossible, the teacher will need to provide additional models of input for students as well as opportunities to use the models.
236	200	EL/Differentiated Instruction	ELD/Academic Language	Consider using expository text that provides information related to grade-level content standards in the other disciplines (history—social science, science, and mathematics).
237	221	EL/All/Differentiated Instruction	ELD	A systematic schedule for introducing, teaching, and linking speaking strategies with similar standards in reading and writing should be developed.
238	226	EL/All/Differentiated Instruction	ELD	Some reading selections used to illustrate plot elements can be taken from below-grade-level discourse. At this stage the most important goal is for students to learn the fundamental elements of plot (rather than demonstrate grade-level reading ability).
239	228	EL/Differentiated Instruction	ELD	In classes with English learners , teachers should consider reading aloud from one or two of the models used to teach fundamental plot elements . The students may experience no difficulty in learning plot elements conceptually but may be limited in their ability to comprehend the written material and express their conceptual knowledge in writing.
240	228	EL/Differentiated Instruction	ELD	Simplify the task for English learners by focusing more attention initially on the plot elements in a narrative composition and less on other aspects of writing.

241	228	EL/Differentiated Instruction	ELD	Note that although all students have difficulty in focusing on all aspects of written discourse at once, English learners especially may need additional time to complete tasks and additional practice .
242	228	EL/Differentiated Instruction	ELD	Teach students how to switch between past and present tenses to develop narrative plots. ("This is a story about a girl who fell in love with a toad.")
243	228	EL/Differentiated Instruction	ELD	Provide corrective feedback to students on their compositions to help them with standard English conventions. The feedback needs to be shaped to the specific needs of English learners and should always be presented gently and positively.
244	228	EL/Differentiated Instruction	ELD	Encourage English learners to practice their English-speaking skills . They should be allowed to practice their oral presentations before presenting them in class and should be allowed to use visual aids as prompts if necessary .
245	256	EL/Differentiated Instruction	ELD	The recommended accommodation for these students is access to the regular language arts curriculum through careful, systematic instruction in key concepts and strategies , such as those described previously. In addition, these students may require additional teacher or peer support (or both) with difficult procedures, such as developing a well-organized outline and organizing index cards to fit the outline. In addition, topics for students may vary, allowing research on topics that are more familiar .
246	257	EL/Differentiated Instruction	ELD	Although all writing assignments are likely to be challenging for English learners , research reports may be especially difficult, given the additional requirements of reading source materials and cataloguing the results for planning purposes.
247	257	EL/Differentiated Instruction	ELD	Direct English learners to source materials written at a level they can manage .
248	257	EL/Differentiated Instruction	ELD	Use clear, simple instructional language to teach the basic concepts and procedures of research report writing . During any cooperative learning sessions, care should be taken to distribute English learners among the groups.
249	257	EL/Differentiated Instruction	ELD	Provide English learners with feedback at every stage of developing their research reports. They need guidance in organizing, finding reference materials, and revising and editing .
250	257	EL/Differentiated Instruction	ELD	Expose English learners to several models of the types of research reports they are expected to write .
251	257	EL/Differentiated Instruction	ELD	Provide additional instruction in how to incorporate quotations and citations into their reports appropriately.
252	257	EL/Differentiated Instruction	ELD	Assess English learners at every stage of the research report . Editing is an important stage that teachers often overlook, partly because of the grammar mistakes they make and partly because it is the last stage in the research report process. Teachers need to make sure that they save time to assess this stage along with the other important stages of the research report.
253	258	EL/Differentiated Instruction	ELD	... include detailed guides to resources particularly useful for this standard (such as web sites or references written below grade level for English learners and students who have reading difficulties).
254	283-284	EL/Differentiated Instruction	ELD	Students with reading difficulties or disabilities often use long strings of primitive kernel sentences in their writing. They may run a number of these sentences together without punctuation, splice them with commas, or join them with repeated use of conjunctions like <i>and</i> or <i>but</i> . In turn, many of the sentences are likely to overuse passive and intransitive verbs. When necessary, teachers should be prepared to begin instruction in sentence combining at the students' level . In addition, these students will probably take longer to make the transition

256	284	EL/Differentiated Instruction	ELD	from predominantly simple sentences to the wider use of longer, more appropriate complex sentences. Students with limited proficiency in English will require intensive English-language instruction above and beyond that found in the regular language arts program. The type of explicit strategy instruction described previously for lower-performing students will help English learners as well. In addition to explicit instruction in sentence combining, students with limited proficiency in English may require more instructional time for intense work on well-formed grammatical kernel sentences.
257	285	EL/All/Differentiated Instruction	ELD	Instructional materials should provide for a very wide range of student achievement levels in the seventh grade. Publishers will always be safe in providing <i>more</i> resources for a given set of standards—such as those for sentence combining and related conventions—than one might think sufficient for average students. (It is far easier for teachers to elect to not use some resources than to create them from scratch or to find them.) For instance, teachers should have the option of drawing from a rich variety of sample writing—examples of good and poor writing—to use as the basis for instruction in sentence combining.
258	309-310	EL/Differentiated Instruction	ELD	Students are likely to encounter two major obstacles to meeting the standards for persuasive discourse as well as many other standards at this level. First, difficulties in reading can forestall critical and analytical reading of appropriate grade-level examples of persuasive writing. Alternative reading material below grade level may be substituted. Although these students may not achieve the desired goals as to reading level, they should be able to reach other standards as their reading level improves. In addition, the use of aides or peer-mediated instruction can provide the students with additional assistance in their study of difficult vocabulary and syntax in their reading assignments.
259	310	EL/Differentiated Instruction	ELD	As much as possible, struggling readers should be encouraged to work on reading fluency itself as an ongoing activity outside the language arts classroom. They might be helped by being tutored or by receiving assistance in study hall or in classes designed to address more serious reading problems.
260	310	EL/Differentiated Instruction	ELD	Other obstacles for lower performers at this level are writing mechanics in general and handwriting and spelling in particular. Research shows that students identified as having learning disabilities are often preempted from success in writing because the cognitive requirements of writing mechanics are too demanding.
261	310	EL/Differentiated Instruction	ELD	General education teachers may be limited in accommodating major deficiencies they observe in their students' use of writing mechanics. Such students can benefit from peer-mediated, scaffolded instruction and from any outside support that can be arranged.
262	311	EL/Differentiated Instruction	ELD	English learners benefit from specific instruction concerning argumentation.
263	311	EL/Differentiated Instruction	ELD	English learners should be taught to avoid relying on such common slang words as <i>guy</i>, <i>kid</i>, <i>by the way</i>, and <i>stuff</i> as well as such general words as <i>thing</i>, <i>nice</i>, and <i>kind</i> in their writing.
264	311	EL/Differentiated Instruction	ELD	English learners will experience difficulty in paraphrasing because they lack depth of vocabulary. They should be taught how to incorporate quotations into their texts to support their arguments and to reference appropriately and correctly.
265	311	EL/Differentiated Instruction	ELD	Because students will present opposing views and explain why their view is better than that of others, they must be taught such grammatical structures as comparisons. Transitional devices (such as <i>first</i>, <i>second</i>, <i>to conclude</i>, and <i>in summary</i>) might also be taught.
266	311	EL/Differentiated Instruction	ELD	English learners should be encouraged to practice before giving an oral presentation and should be allowed to use a prop or visual that will aid them during their presentation.

267	311	EL/Differentiated Instruction	ELD	Teachers should provide corrective feedback consistently at the revising and editing stages to help English learners develop their English skills.
268	311	EL/Differentiated Instruction	ELD	Teachers must provide students with straightforward assessments of their proficiency in English at every stage of instruction so that students understand what they can do to improve.
269	312	EL/All/Differentiated Instruction	ELD	Instructional materials should be provided in abundance for teachers to use with students who possess a broad range of abilities. Instead of presenting ideas for working with special-needs students in a sentence or two, for example, the instructional materials should provide many ready-to-go items for additional practice and instructional opportunities for English learners and students with learning difficulties. Similarly, several substantial resources or alternate assignments should be provided for high-performing students. Teachers cannot realistically be expected to invest long hours in finding or developing those resources.

CHAPTER 5: CONTENT STANDARDS AND INSTRUCTIONAL PRACTICES GRADES NINE THROUGH TWELVE

Citation Number	Page Number	English Learner /All Students/ Differentiated Instruction References	English Language Development/ Academic Language References	Reading/Language Arts Framework Text Language:
270	333	EL/All	ELD	Applying etymological and morphological knowledge to word meanings continues to be emphasized, particularly words derived from Greek, Roman, and Norse mythology. Students also distinguish between the denotative and connotative meanings of words and learn about the power of connotative meanings.
271	333	EL/All	ELD	Instruction in word derivation should take place throughout the year as a relatively small part of several lessons. In addition, all work in vocabulary study should be reviewed cumulatively and periodically throughout the year. New vocabulary—especially when it represents new conceptual knowledge—is rarely acquired without such review. Often, students at this level may study word derivations independently, but their work should be closely monitored by the teacher.
272	339	EL/All/Differentiated Instruction	ELD	Written and Oral English-Language Conventions Conventions emphasized at this level include: <ul style="list-style-type: none"> • Sentence and paragraph structure: main and subordinate clauses, phrases, parallel structure, consistency of verb tenses, placement of modifiers • Punctuation: semicolons, colons, ellipses, hyphens • Grammar and usage, diction, syntax • Correct spelling • Manuscript conventions: title page, pagination, spacing and margins • Appropriate citations for source and support material These standards are mostly the continuation of standards from earlier grade levels. Some students will need explicit remedial instruction for some standards that were previously introduced but not mastered.
273	339-340	EL/All/Differentiated Instruction	ELD	Many students will need help with some aspect of the conventions standards. Although certain standards should require very little instruction (e.g., manuscript conventions), some usage topics will most likely plague many students (e.g., whether to use <i>affect</i> or <i>effect</i> ; case of pronouns).
274	340	EL/All	ELD	Listening and Speaking Strategies The basic structural elements of oral presentations overlap significantly with written expression: logical patterns of organization, techniques for developing introductions and conclusions, development of a clear thesis, and so on. For that reason instruction should be made efficient by addressing the structural elements in conjunction with oral and written expression. Students can present orally the compositions they have written, giving them an opportunity to focus on the types of rhetorical elements unique to speech.
275	341	EL/All	ELD	So that students can be assisted in analyzing oral and media presentations, they should first be taught the basic structures of such presentations through the use of models and formal instruction. They are thereby equipped with the tools they need for their own analyses. For example, students might first read a script for a situation comedy and then watch other comedies, evaluating the extent to which basic elements recur and identifying the

				elements of tone, timing, and delivery that contribute to creating humor.
276	341	EL/All	ELD	<p>Listening and Speaking Applications</p> <p>Students are required to deliver presentations of the following types: narrative (autobiographical or fictional); expository (research); oral responses to literature; argument or persuasion; and descriptive.</p> <p>Most of the genres in the standards for oral presentations are also targets of standards at other levels and within other domains. Such strongly related standards at this level should be taught in conjunction with one another. Some oral presentations should be carefully prepared and rehearsed; others should be extemporaneous.</p> <p>Text structures and skills in listening and reading are connected in the same way in which speaking and writing are connected. Just as reading comprehension is more than decoding and pronunciation, listening is more than simply hearing spoken words. Students in the ninth and tenth grades are expected to analyze and evaluate a speaker's arguments and tone and the techniques used to create them. The use of comparison and contrast is an effective instructional strategy to help students note the key features in oral presentations.</p>
277	341	EL/All	ELD	<p>Text structures and skills in listening and reading are connected in the same way in which speaking and writing are connected. Just as reading comprehension is more than decoding and pronunciation, listening is more than simply hearing spoken words. Students in the ninth and tenth grades are expected to analyze and evaluate a speaker's arguments and tone and the techniques used to create them. The use of comparison and contrast is an effective instructional strategy to help students note the key features in oral presentations.</p>
278	344	EL/All	ELD	<p>Instructional Objective</p> <p>Develop vocabulary systematically, applying etymology and morphology, with particular emphasis being given to the contributions of Greek, Roman, and Norse mythology to English vocabulary.</p>
279	344	EL/All	ELD	<p>Instructional Design</p> <p>Beginning in the fourth grade, standards have emphasized the use of internal etymological and morphological cues as well as external context cues. Therefore, students should be very familiar with contributions that morphological and etymological cues can make to vocabulary development</p>
280	344	EL/All	ELD	<p>In the ninth and tenth grades, that emphasis extends to analyzing words according to etymology and morphology, specifically to the contributions of Greek, Roman, and Norse mythology to the English language. Such an analysis should include comparing literal etymological meanings with meanings currently in use. Words (e.g., roots) selected for initial instruction can lead to many other words, all of which contain that meaning (e.g., <i>solar</i>, <i>solstice</i>, <i>solarium</i>). Other useful roots can then be introduced (e.g., <i>fortune</i>, a word derived from Fortuna, Roman goddess of luck and vengeance; or <i>cloth</i>, derived from one of the three sisters of fate in Greek mythology, Clotho, who spun the thread of life in her spindle).</p>
281	344	EL/All	ELD	<p>Words derived from mythology are often based on proper names, such as Narcissus as the basis for <i>narcissistic</i>. Students can study this category of word derivation beyond mythology as well. For instance, the word <i>maverick</i> is derived from the name of a Texas cattle rancher (Samuel A. Maverick), who did not brand his calves.</p>
282	345	EL/All	ELD	<p>Instructional Delivery</p> <p>Many tools are available to students for working independently and successfully on morphological and etymological word derivations. Textbooks should supply the fundamentals for the study of derivations and effective activities for independent application. Several trade books found in the reference section of most bookstores also address the vocabulary and conceptual development standards well (e.g., books on word origins, morphemically based vocabulary books, dictionaries). Many of the tools are also available through the Internet</p>
283	345	EL/All	ELD	<p>Throughout the year teachers, by themselves or with the aid of textbooks, should briefly review the fundamentals of instruction in derivations and particularly useful affixes and roots.</p>
284	345	EL/All/Differentiated Instruction	ELD	<p><i>Entry-Level Assessment for Instructional Planning.</i> Students can be tested on their knowledge of high-frequency prefixes, suffixes, and some nonword bases. Tasks should include (a) asking students the meanings of some of the morphological elements; and (b) giving students some meanings and asking them to identify</p>

				parts that correspond. Students should also be evaluated on their ability to break a word into its component parts.
285	345-346	EL/All/Differentiated Instruction	ELD	<i>Monitoring Student Progress Toward the Instructional Objective.</i> The most important characteristic of monitoring student progress in areas such as vocabulary (and oral and written language conventions) is cumulative monitoring; that is, checking periodically to determine whether students have retained the knowledge and skill learned throughout the school year. If they have not, teachers should provide additional opportunities for study and review.
286	346	EL/All/Differentiated Instruction	ELD	<i>Post-test Assessment Toward the Standard.</i> Students should demonstrate their ability to extract the meanings of unfamiliar words through internal morphological and etymological cues (as well as context cues). They should show their work by indicating which meanings of which word parts led them to their inferences of word meanings.
287	346	EL/All/Differentiated Instruction	ELD	<i>Students with Reading Difficulties or Disabilities.</i> Some students may require more instruction and practice than do others in extracting meanings. Support should be provided through scaffolded activities, explicit instruction, and peer assistance.
288	347	EL/All	ELD	<i>Students Who Are English Learners.</i> English learners often acquire the meaning of new words without being able to use them because they have not learned the grammatical rules governing usage and lack knowledge of the specific contexts in which the words are used. For instance, they may learn the meanings of such sophisticated words as <i>torrid</i> , <i>pungent</i> , and <i>umbrage</i> without having any idea how to use them in communication. (Consider, for instance, the learner who wrote, "She burned her tongue on the <i>torrid</i> food.")
289	347	EL/All	ELD/ Academic Language	Teachers should provide English learners with information concerning not only the origins of words but also the use of words. English learners need to be helped to use the words appropriately in sentences. English learners often have great difficulty in acquiring more basic academic words (such as <i>comprise</i> , <i>denote</i> , <i>signify</i> , <i>summarize</i> , and <i>mention</i>) than words of Greek, Latin, and Old Norse derivation.
290	347	EL/All	ELD/ Academic Language	However, they benefit from instruction in the academic words, which appear in great number in middle school and high school textbooks. They also benefit from increased exposure to the words, opportunities to use them, and feedback as to usage.
291	347	EL/All	ELD	Instructional materials should provide teachers with substantial means for teaching all the standards related to the more conventional language arts instruction: vocabulary, grammar and usage, spelling, capitalization, and punctuation. Students at this level will differ in their ability to use the conventions. Instructional materials should, therefore, be focused on independent activities that can be assigned as needed.
292	375	EL/All/Differentiated Instruction	ELD	<i>Students Who Are English Learners</i> a. Teachers need to provide English learners with models of the types of literary analyses the learners are expected to produce. Also recommended are exercises that will help the learners acquire the grammatical structures and vocabulary needed to perform the analyses and consistent feedback on the quality and accuracy of the learners' written work. b. Because English learners may not have access to the same cultural knowledge as English speakers do in order to analyze political assumptions, teachers may need to provide the learners with additional information. c. English learners may not have acquired the grammatical structures and vocabulary needed to complete

				<p>literary analyses. For instance, they may not have learned how to use the present tense to discuss specific types of literary texts. (Note how the present tense is used in this sentence: Hamlet <i>dies</i> and his son <i>seeks</i> revenge.)</p> <p>English learners require additional information on verb tense as well as instruction in introducing and incorporating short and long quotations into text to support literary analyses and in analyzing texts rather than merely summarizing them.</p> <p>d. As the learners acquire advanced academic vocabulary, they should be guided in the appropriate use of the words in their writing.</p>
293	376	EL/All/Differentiated Instruction	ELD	<p>Instructional materials should provide the following:</p> <ol style="list-style-type: none"> 1. A sufficient number of examples of the genres targeted at this level that span reading, writing, and speaking 2. Procedural facilitators (i.e., devices designed to help facilitate acquisition of new knowledge and skills) 3. Reading selections coordinated to address more than a single standard 4. Examples of explicit strategies for achieving important standards 5. Substantial, significant resources for helping teachers accommodate a wide range of student achievement

CHAPTER 6: ASSESSMENT OF PROFICIENCY IN THE LANGUAGE ARTS

Citation Number	Page Number	English Learner / All Students/ Differentiated Instruction References	English Language Development /Academic Language References	Reading/Language Arts Framework Text Language:
294	389	EL/All/Differentiated Instruction	ELD	<i>Entry-level assessment:</i> Do students possess crucial prerequisite skills and knowledge expected at their grade level? Do they already know some of the material to be taught?
295	389	EL/All/Differentiated Instruction	ELD	<i>Monitoring of progress:</i> Are students progressing adequately toward achieving the standards? Do they need reteaching? Is emphasis on specific instructional components needed in the next series of lessons or units?
296	389	EL/All/Differentiated Instruction	ELD	<i>Summative assessment:</i> Have students achieved the goals defined by a given standard or group of standards?
297	390	EL/All/Differentiated Instruction	ELD	The discussion in this chapter also summarizes California's statewide assessment system, including the Standardized Testing and Reporting (STAR) Program, the <i>California High School Exit Examination (CAHSEE)</i> , and the <i>California English Language Development Test (CELDT)</i> .
298	391	EL/All/Differentiated Instruction	ELD	Entry-level assessments...are used to determine the proficiency of individual students or groups of students according to a specific standard or prerequisite skill or knowledge. This determination informs the teacher what needs to be included in upcoming lessons or in reteaching or reteaching lessons.
299	391	EL/All/Differentiated Instruction	ELD	Monitoring of Progress...assessments focus on the general skills and knowledge students are to acquire according to the standards. Through tests developed by publishers, teachers, or districts and arranged as periodic assessments for all students , the domains and strands of the standards are assessed at the end of each major set of lessons (every six to eight weeks) to ensure all students are progressing as expected and to provide feedback on the effectiveness of instruction.
300	391-392	EL/All/Differentiated Instruction	ELD	The tests, which are curriculum embedded and aligned to instruction , should be administered and scored frequently by the teacher.
301	392	EL/All/Differentiated Instruction	ELD	The results should be analyzed for each student and classroom on the basis of established levels that identify (1) who is at mastery; (2) what percent of students are at mastery; and, (3) which students need additional instructional support and in what area . The results should influence how teachers modify or emphasize parts of the curriculum and when differentiation of instruction is necessary .
302	392	EL/All/Differentiated Instruction	ELD	Summative assessments... include quarterly, midyear, and end-of-the-year tests developed by the publisher and the school district. They are used to determine whether the student has mastered the content and to document long-term growth .
303	392-393	EL/All/Differentiated Instruction	ELD	... key indicators or predictors can be used to identify students making adequate progress toward literacy standards and those likely to have continued difficulty in learning to read. Those key indicators are derived largely from research on students who learn to read easily in comparison with those who do not.
304	393	EL/All/Differentiated Instruction	ELD	The purpose of the measures is to identify students who need additional instruction and assess the effectiveness of instruction over time to be more responsive to student learning.

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305	397	EL/All/Differentiated Instruction	ELD	Assessments should be conducted to assist in determining the next steps for instruction, plans for interventions, and monitoring of response to instructional supports as necessary.
306	399	EL/All/Differentiated Instruction	ELD	Some students may require more extensive assessment of strengths and weaknesses, including the use of specialized testing.
307	399	EL/All/Differentiated Instruction	ELD	Instructional materials should emphasize which tasks double as instructional and progress assessment tasks, along with guidelines to assist teachers as they make data-based decisions.
308	400	EL/All/Differentiated Instruction	ELD	...routinely assess students' proficiency in all the writing applications appropriate for each grade level....
309	401	EL/All/Differentiated Instruction	ELD	The exact purpose of each assessment should be clear: Do the students have the prerequisite skills needed? Do they already know the planned content? To what extent do they know the content? The results of entry-level assessments help guide the teacher in setting the course of initial instruction and determining modifications for specific students or groups of students.
310	401	EL/All/Differentiated Instruction	ELD	The most critical guideline for the monitoring of progress is that it should occur at frequent intervals and that the assessment data should be used quickly to respond to student learning and adjust instruction.
311	402	EL/All/Differentiated Instruction	ELD	In an effort to ensure the progress of every student, the data should be examined at individual student and classroom levels.
312	402	EL/All/Differentiated Instruction	ELD	Because the monitoring of progress is a collaborative, professional activity, the data should be shared among teachers at the same grade level and should be analyzed to identify student needs and determine what strategies are working most effectively.
313	402	EL/All/Differentiated Instruction	ELD	Everything students do during instruction provides teachers with an opportunity for monitoring their progress.
314	402	EL/All/Differentiated Instruction	ELD	Effective teachers utilize different assessment tools to inform instruction and meet the instructional needs of individual students.
315	403	EL/All/Differentiated Instruction	ELD	The most critical aspect of all summative assessment is that it measures generalization and transference of skills and knowledge required for mastery of grade-level standards
316	403	EL/All/Differentiated Instruction	ELD	Summative assessments aligned with the standards and the curriculum are not mere reflections of the retained knowledge, but can be the most valid and reliable indicators of depth of understanding as demonstrated through generalization and transference.
317	404	EL		...the STAR Program includes tests written in Spanish for Spanish-speaking English learners...
318	406	EL	ELD	The California English Language Development Test (CELDT) is an English language proficiency assessment. While the STAR California Standards Tests in English-Language Arts are aligned to the English-Language Arts Content Standards, the CELDT is based on the English Language Development Standards.
319	406	EL	ELD	The CELDT has three purposes: (1) to identify new students in kindergarten through grade 12 who are English learners; (2) to determine their level of English language proficiency; and (3) to annually assess the progress of English learners toward acquiring listening, speaking, reading, and writing skills in English. Once a student is identified as fluent English proficient, the student no longer takes the CELDT.
320	406-407	EL/All/Differentiated Instruction	ELD	This framework places substantial emphasis on integrating an assessment system with curriculum and instruction. Therefore, assessment and instruction must be interrelated in ways that maximize the potential for assessment measures themselves to contribute to more effective instruction and meaningful learning.

CHAPTER 7: UNIVERSAL ACCESS TO THE LANGUAGE ARTS CURRICULUM

Citation Number	Page Number	English Learner/ All Students/ Differentiated Instruction References	English Language Development/ Academic Language References	Reading/Language Arts Framework Text Language:
321	408	EL/All/Differentiated Instruction	ELD	<i>The ultimate goal of language arts programs in California is to ensure access to high-quality curriculum and instruction for all students in order to meet or exceed the state's English-language arts content standards.</i>
322	408	EL/All/Differentiated Instruction	ELD	The diversity of California's students presents unique opportunities and significant challenges for instruction. Students come to school with a wide variety of skills, abilities, and interests as well as varying proficiency in English and other languages.
323	408	EL/All/Differentiated Instruction	ELD	The wider the variation of the student population in each classroom, the more complex becomes the teacher's role in organizing high-quality curriculum and instruction in the language arts and ensuring that each student has access according to the student's current level of achievement.
324	408	EL/All/Differentiated Instruction	ELD	The ultimate goal of language arts programs in California is to ensure access to high-quality curriculum and instruction for all students in order to meet or exceed the state's English-language arts content standards. To reach that goal, teachers need assistance in assessing and using the results of that assessment for planning programs, differentiating curriculum and instruction, using grouping strategies effectively, and implementing other strategies for meeting the needs of students with reading difficulties, students with disabilities, advanced learners, English learners, and students with combinations of special instructional needs.
325	408	EL/All/Differentiated Instruction	ELD	Assess each student's understanding at the start of instruction and continue to do so frequently as instruction advances
326	409	EL/All/Differentiated Instruction	ELD	Diagnose the nature and severity of the student's difficulty and modify curriculum and instruction accordingly when students have trouble with the language arts.
327	409	EL/All/Differentiated Instruction	ELD	Engage in careful organization of resources and instruction and planning to adapt to individual needs. A variety of good teaching strategies...can be used according to the situation...
328	409	EL/All/Differentiated Instruction	ELD	Differentiate when necessary as to depth, complexity, novelty, or pacing and focus on the language arts standards and the key concepts within the standards that students must master to move on to the next grade level.
329	409	EL/All/Differentiated Instruction	ELD	Employ flexible grouping strategies according to the students' needs and achievement and the instructional tasks presented.
330	409	EL/All/Differentiated Instruction	ELD	Enlist help from others, such as reading specialists, special education specialists, parents, aides, other teachers, community members, administrators, counselors, and diagnosticians when necessary and explore technology or other instructional devices or instructional materials...to respond to students' individual needs.
331	409	EL/All/Differentiated Instruction	ELD	One of the first tasks required of a school district is to determine its students' achievement levels in the language arts so that each student or group of students can be offered a structured language arts program leading to the attainment of all of the content standards. What the student already knows in the language arts should form the basis for further learning and study.

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332	410	EL/All/Differentiated Instruction	ELD	Assessment is the key to ensuring that all students are provided with language arts instruction designed to help the students progress at an appropriate pace from what they already know to higher levels of learning. Knowing which standards have been mastered, teachers can better plan the instructional program.
333	410	EL/All/Differentiated Instruction	ELD	
334	410	EL/All/Differentiated Instruction	ELD	For a variety of reasons, gaps often appear in what has been learned by students with special instructional needs. The gaps can be discovered through assessment, and instruction can be designed to remediate specific weaknesses without slowing down the students' entire language arts program.
335	411	EL/All/Differentiated Instruction	ELD	A student success team might be called on to discuss appropriate support for the student.
336	411-412	EL/All/Differentiated Instruction	ELD	...the teacher may wish to provide specific assignments over a period of time for students to complete with a peer or tutor or by themselves at home. Regular study groups working before or after school, in the evenings, or on weekends can provide an effective extension of the learning time. Some students may need to schedule extended blocks of time for the study of language arts to master difficult content. Others may require specific accommodations and modifications to the classroom environment, curriculum, or instruction as identified in the students' 504 plan.
337	413	EL/All/Differentiated Instruction	ELD	Establish a safe and supportive environment in which the students are encouraged to talk and ask questions freely when they do not understand.
338	413	EL/All/Differentiated Instruction	ELD	Use a wide variety of ways to explain a concept or assignment. When appropriate, the concept or assignment may be depicted in graphic or pictorial form, with manipulatives, or with real objects to accompany oral and written instructions.
339	413	EL/All/Differentiated Instruction	ELD	Provide assistance in the specific and general vocabulary to be used for each lesson prior to the lesson, using reinforcement or additional practice afterward. Instructional resources and instruction should be monitored for ambiguities or language that would be confusing, such as idioms.
340	413	EL/All/Differentiated Instruction	ELD	Set up tutoring situations that offer additional assistance. Tutoring by a qualified teacher is optimal. Peer or cross-age tutoring should be so designed not to detract from the instructional time of either the tutor or tutee and should be supervised.
341	413	EL/All/Differentiated Instruction	ELD	Extend the learning time by establishing a longer school day, weekend classes, and intersession or summer classes.
342	413	EL/All/Differentiated Instruction	ELD	Enlist the help of parents at home when possible.
343	414	EL/All/Differentiated Instruction	ELD	Establish special sessions to prepare students for unfamiliar testing situations.
345	414	EL/All/Differentiated Instruction	ELD	Ask each student frequently to communicate his or her understanding of the concept or assignment. Students should be asked to verbalize or write down what they know, thereby providing immediate insight into their thinking and level of understanding. In addition, students should be encouraged to confer about each other's understanding of the concept being taught and the class work or homework assignments, particularly if the students are not fully proficient in English.
346	414	EL/All/Differentiated Instruction	ELD	Check frequently for understanding in a variety of ways. When a student does not understand, analyze why.

347	414	EL/All/Differentiated Instruction	ELD	Allow students to demonstrate their understanding and abilities in a variety of ways while reinforcing modes of communication that will be used on standardized tests.
348	414	EL/All/Differentiated Instruction	ELD	...students...with learning difficulties in the language arts often require systematically planned differentiation to ensure that curriculum and instruction are appropriately challenging.
349	415	EL/All/Differentiated Instruction	ELD	For students experiencing difficulty in the language arts, the same content might be extended over twice as long a period of time for additional reinforcement in the more difficult concepts. ...A key element in slowing down instruction is to ensure that the content remains rigorous, that the students move ahead as quickly as they can, and that the instruction leads to mastery of the content standards within a reasonable amount of time.
350	415	EL/All/Differentiated Instruction	ELD	Modifying instruction as to complexity requires more training and skill on the part of the teacher and the provision of instructional materials that lend themselves to such variations.
351	415-416	EL/All/Differentiated Instruction	ELD	For students experiencing difficulty in the language arts, the teacher should focus on the key concepts within the standards and eliminate confusing activities or variables. The lessons should be even more organized and sequential and be focused on the most important concepts. Instruction is not thereby watered down. Instead, it is distilled to ensure that instructional time is used to help students understand the fundamental concepts or skills needed to master later standards.
352	416	EL/All/Differentiated Instruction	ELD	This framework advocates a focus on the standards and frequent assessment to ensure that students are not just passed along without the skills they will need to be successful in subsequent grades. Struggling students are expected to learn the key concepts well so that they can develop a foundation on which further understanding can be built.
353	416-417	EL/All/Differentiated Instruction	ELD	Grouping is a tool and an aid to instruction,... It is perfectly appropriate, even advisable, to group those students who do not understand a concept or skill and to find time to reteach the concept or skill in a different way and provide additional practice.
354	417	EL/All/Differentiated Instruction	ELD	To promote maximum learning, the teacher should ensure that assessment is frequent, that high-quality instruction is always provided, and that the students are frequently moved into appropriate instructional groups according to their needs.
355	421	EL	ELD	English learners have as their goal developing proficiency in English and in the concepts and skills contained in the <i>English–Language Arts Content Standards</i> . Because of recent changes in California law, instruction for most English learners must be presented “overwhelmingly in English.”
356	421	EL	ELD	To learn English and achieve mastery of the English–language arts content standards, students must participate in instructional programs that combine skill and concept development in both English literacy and the English language.
357	421	EL	ELD	To learn English and achieve mastery of the English–language arts content standards, students must participate in instructional programs that combine skill and concept development in both English literacy and the English language.
358	421-422	EL/Differentiated Instruction	ELD	For those students whose parents have chosen a program that teaches literacy in the primary language, students must work to achieve the same standards contained in the <i>English–Language Arts Content Standards</i> . Appropriate modifications should be made for the language of instruction.
359	422	EL/Differentiated Instruction	ELD	...instruction in reading and writing for English learners should not be delayed until the students have mastered oral English. Effective early instruction in English literacy... must be incorporated into a program of English–language development from the very beginning.

360	422	EL/Differentiated Instruction	ELD	Students must be provided significant support to be successful in the language arts. Such support includes the preteaching of essential elements of lesson vocabulary and language structure and additional assistance after the lesson during the school day and after school.
361	422	EL/Differentiated Instruction	ELD/Academic Language	Instruction in oral and written academic language for English learners is a critical element that must be specifically designed, planned, scheduled, and taught . It includes direct instruction and experiences for students in English phonology, morphology, syntax, and semantics and supports students as they move toward English proficiency.
362	422	EL/Differentiated Instruction	ELD	Instructional programs for English learners should be planned according to the students' assessed levels of literacy in English and their primary language as well as their proficiency in English.
363	422	EL/Differentiated Instruction	ELD	English-language proficiency progresses from the students' initial contact with formal instruction in English to the point at which their use of English compares with that of their native English-speaking peers. Because of differing academic backgrounds and ages, some students can be expected to progress more quickly and others to require more support in the English-language arts program.
364	422	EL/Differentiated Instruction	ELD	Instructional materials contain assessment tools to diagnose students' proficiency in listening, speaking, reading, and writing in English and to assist teachers in planning initial instruction, monitoring progress, and conducting summative evaluations.
365	423	EL/Differentiated Instruction	ELD	Three groups of English learners must be considered in program planning: students in kindergarten through grade two; those in grades three through twelve who are literate in their primary language; and those in grades three through twelve who have limited prior academic experience or literacy in their primary language.
366	423	EL/Differentiated Instruction	ELD	Typically, primary students who are learning English can participate fully in classroom language arts instruction if provided appropriate reading and writing supports and instruction in oral language.
367	423	EL/Differentiated Instruction	ELD	Students in grades three through twelve who have strong literacy skills in their primary language can be expected to transfer many of those skills to English and to progress rapidly in learning English. And students in grades three through twelve with limited prior schooling will require intensive support in beginning literacy instruction as well as in learning English.
368	423	EL/Differentiated Instruction	ELD	Students who begin to learn reading and writing in English in the primary grades should participate fully in the classroom program and receive additional support to achieve the English-language arts content standards. Whereas most English-speaking kindergartners enter school with 6,000 to 15,000 words in their English vocabulary, most English learners do not. Instruction in English is a critical component of the program for English learners and proceeds simultaneously with direct, explicit, and systematic instruction in reading and writing. Abundant opportunities to participate in oral language and speaking activities help students hear and develop the English sound system and lexicon and support the concurrent development of reading and writing with comprehension.
369	423	EL/Differentiated Instruction	ELD	Beginning instruction in reading, particularly in phonemic awareness, concepts about print, and vocabulary development commences immediately upon entry into school and supports the acquisition of English phonology and initial language structures.
370	423-424	EL/Differentiated Instruction	ELD	In kindergarten and the first grade, English learners progress to sound-symbol correspondence and formation of letters as they build vocabulary and an understanding of the features of the English language.
371	424	EL/Differentiated Instruction	ELD	Full comprehension of text will be limited by the students' level of English proficiency and should be supported by additional exposure to and study of vocabulary and language patterns presented in the text.
372	424	EL/Differentiated Instruction	ELD	

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373	424	EL/Differentiated Instruction	ELD	Students should receive preteaching in essential vocabulary, background information, and language patterns. A review of key lesson elements and assessment of the students' level of understanding should follow the lessons in reading and writing.
374	424	EL/Differentiated Instruction	ELD	As described at the beginning of this chapter, additional instructional time, differentiated instruction, flexible grouping, and smaller groups should provide students the support they need to succeed in the language arts.
375	424	EL/Differentiated Instruction	ELD	After-school programs, specialist teachers, and the judicious use of tutors and paraprofessionals are other sources of support.
376	424	EL/Differentiated Instruction	ELD	Additional instructional support must align with classroom instruction and assist students in learning the specific vocabulary, background knowledge, and language structures needed to succeed.
377	424-425	EL/Differentiated Instruction	ELD	English learners entering school in grades three through twelve with strong literacy skills in their primary language are advantaged in that they can concentrate on acquiring and learning English rather than on receiving initial instruction in reading and writing.
378	424	EL/Differentiated Instruction	ELD	However, the greater cognitive demands of the academic program in those grades require that the students move quickly to more advanced English vocabulary and language structures. English-language development should be intensive and should emphasize the language students will need to know so that they profit from instruction in the language arts and other content areas at their grade level.
379	424	EL/Differentiated Instruction	ELD	Again, students will need additional support to learn English and to understand the vocabulary and language of instruction. School districts and schools need to consider additional allocations of instructional time to maximize students' opportunities to acquire language and participate in the overall language arts program.
380	424	EL/Differentiated Instruction	ELD	Students who enter school in grades three through twelve with little prior schooling and limited English must be quickly identified and assessed to determine their level of reading and writing skills in their primary language and in English.
381	424	EL/Differentiated Instruction	ELD	Learning to read and write while concurrently learning English is a challenge for these students. School districts and schools need to structure the instructional program so that the students receive the instruction they require in literacy and language.
382	424	EL/Differentiated Instruction	ELD	The students require intensive, systematic instruction in oral and written language, including, for example, instruction in the use of common nouns, verbs, adjectives, and adverbs. They also need to learn common phrases, language patterns, and idiomatic expressions.
383	424	EL/Differentiated Instruction	ELD	Materials that address those skills, individualized instruction, and additional assistance and instructional time will be needed to support English learners who have limited academic experience. The materials must describe age-appropriate activities to teach reading and English-language development.
384	426	EL/Differentiated Instruction	ELD/Academic Language	From the earliest stages of their academic careers and in concert with instruction in reading and writing, English learners participate in an instructional program that supports their acquisition of informal English and teaches them the patterns of formal academic English.
385	426	EL/Differentiated Instruction	ELD/Academic Language	The instruction is designed to provide for students experiences with English that are understandable and meaningful and enable the students to communicate with peers and adults and thereby participate fully in the academic program.
386	426	EL/Differentiated Instruction	ELD	Students begin by learning basic social conventions, rudimentary classroom vocabulary, and ways to express personal and safety needs. They participate in language study in a variety of contexts ranging from

387	426	EL/Differentiated Instruction	ELD	informal classroom conversations to teacher-directed instruction in language forms and structures.
388	426	EL/Differentiated Instruction	ELD/Academic Language	Effective teachers use a variety of activities to introduce and reinforce language concepts (e.g., singing, presenting dramas, reading aloud, using visuals and props, and practicing simple phrases and vocabulary).
389	426	EL/Differentiated Instruction	ELD/Academic Language	Teachers model and teach the language patterns and vocabulary needed to understand and participate in the study of the language arts and other content areas.
390	426	EL/Differentiated Instruction	ELD	They should not assume that students will use their newly acquired academic vocabulary in casual conversation. Instead, they should specifically plan student-to-student discussions in which the students are expected to practice their new vocabulary and understanding of language forms in substantive academic discussions.
391	426-427	EL/Differentiated Instruction	ELD/Academic Language	Students learn English phonology, morphology (including spelling and syllabication patterns), syntax, and semantics through teacher modeling, teacher-directed instruction, and classroom interaction.
392	427	EL/Differentiated Instruction	ELD	They build on classroom exposure and interaction with English sounds, word elements, sentence structure, and vocabulary through directed study and practice of the linguistic elements. Analysis of the elements of instruction and materials increases in sophistication as students progress through the grades and gain linguistic and academic competence.
393	427	EL/Differentiated Instruction	ELD/Academic Language	This purposeful study of the features of the English language, which involves instruction in oral and written language, is connected to the English-language arts content standards through the language arts and content-area instruction in which students participate daily.
394	427	EL/Differentiated Instruction	ELD	Most important, teachers plan opportunities, supported by appropriate instructional materials, for students to produce language they have acquired, use language in academic interactions with peers and adults, and monitor and correct their oral and written language.
395	427	EL/Differentiated Instruction	ELD	Teachers create an environment in which students feel comfortable in risking the use of new and unfamiliar language.
396	427	EL/Differentiated Instruction	ELD	Instructional materials describe for teachers the linguistic features of the most commonly spoken languages as they differ from English (e.g., analysis of similar and dissimilar sounds).
397	428	EL/Differentiated Instruction	ELD	Teachers apply the understanding of similarities and differences among the languages in planning instruction and use questioning and other strategies to foster substantive student discussion and participation.
398	428	EL/Differentiated Instruction	ELD	Emphasis is placed on the students' producing language in a variety of contexts and the teachers' eliciting student participation and thought.
399	428	EL/Differentiated Instruction	ELD	Students should receive specific, constructive feedback from their teachers regarding the accuracy of their oral and written work and their progress toward mastery of conventional English.
400	428	EL/Differentiated Instruction	ELD/Academic Language	Teachers should analyze students' errors to determine development in oral and written English and plan appropriate instruction to improve competence.
401	428	EL/Differentiated Instruction	ELD	Instructional materials contain assessment tools that assist teachers in the analysis and specifically address instruction in those areas as related to grade-level English-language arts standards.
				Instruction for English learners in academic language helps bring the students to a level of English proficiency comparable with that of their native English-speaking peers.
				English-language development occurs daily; is specifically identified within the curriculum of the school district and the school; and is supported by high-quality instructional materials, a sufficient amount of instructional time, and professional development for teachers.

402	428	EL/Differentiated Instruction	ELD	Language development and literacy instruction are integrated with the basic instructional materials and should be specifically identified in the teacher's edition as differentiated instruction for students not fully proficient in English.
403	428	EL/Differentiated Instruction	ELD	For students in grades three through twelve who are just learning English, instructional materials should be specially designed to provide intensive and extensive English-language development. Included should be development in oral and written vocabulary, reading instruction (as described in this framework), and systematic instruction in the forms and features of English.
404	428	EL/Differentiated Instruction	ELD	Publishers are encouraged to develop materials for those districts that choose to have students spend most of their school day receiving such instruction. The purpose of differentiated instruction in English is to move English learners as quickly as possible through stages of language proficiency and to enable them to achieve mastery of the English-language arts content standards.

CHAPTER 8: RESPONSIBILITIES AND SUPPORT FOR PROFICIENCY IN THE LANGUAGE ARTS

Citation Number	Page Number	English Learner/ All Students/ Differentiated Instruction References	English Language Development/ Academic Language References	Reading/Language Arts Framework Text Language:
405	429	EL/All/Differentiated Instruction	ELD	For students to meet grade-level content standards, comprehensive community systems of support should be developed to advocate a sustained focus on the development of language arts skills for every student . A support system for each school will help in the design, implementation, and evaluation of effective language arts instructional plans, classroom teaching strategies, instructional materials, and support systems for students with special needs .
406	429	EL/All/Differentiated Instruction	ELD	Together, the community members can help refocus the school or district priorities for reading, writing, listening, and speaking. The school community can participate in the development and implementation of a literacy plan for each school by:
407	429	EL/All/Differentiated Instruction	ELD	<ul style="list-style-type: none"> • Insisting on a sustained <i>schoolwide and communitywide discussion</i> on students' achievement in the language arts • Establishing clear and measurable reading improvement goals. • Implementing a <i>systematic process for the selection of instructional materials</i> based on comprehensive information, such as reviewing current and confirmed research or data provided by publishers or conducting pilot tests • Providing an effective program of professional development based on current research and the English-language arts content standards for preservice, new, and continuing teachers • Encouraging parent involvement in a variety of ways (e.g., through regular communication between parents and educators, multiple opportunities for volunteering, parent involvement in school decision making, collaboration with community support agencies) • Ensuring the availability of well-stocked classroom libraries and a well-equipped and well-stocked library media center to provide students with access to a variety of high-quality resources for language arts development • Creating partnerships with business, civic, and service organizations and establishing service-learning projects to seek involvement and support for promoting literacy for all students.
408	431	EL/All/Differentiated Instruction	ELD	Parents and families should be well informed about the language arts curriculum their children receive and the progress their children are making in learning to read, write, speak, and listen.
409	432	EL/All/Differentiated Instruction	ELD	Parents and families should be made aware, as appropriate, of resources available to support their own literacy, such as Even Start or adult education.
410	432	EL/All/Differentiated Instruction	ELD	Teachers should have a role in designing their own professional development, which should be planned and organized and should lead to long-term goals and be supported over time.

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411	435	EL/All/Differentiated Instruction	ELD	...specialists play a key role in intervention by working with teachers to identify students who need assistance, conducting specialized assessments, and providing the extra instruction and support students need to master the language arts standards. Specialists "could specialize in knowledge about the cognitive processes involved in typical acquisition of academic skills, in knowledge about the ways in which children might go awry in acquiring important cognitive and academic skills, and in adapting instruction for children with a variety of cognitive and academic difficulties. "
412	435	EL/All/Differentiated Instruction	ELD	...library media teachers, who know the learning resources, technologies, skills, and information problem-solving process, act as partners with the classroom teacher, who knows the students and the curricular content to be addressed, ... expand students' learning opportunities and directly improve achievement.
413	436	EL/All/Differentiated Instruction	ELD	Tutoring methods should complement professional teaching, not supplant it. Pinnel and Fountas (1997) conclude that effective tutoring embodies an organized, well-articulated system that includes strong leadership, quality training, appropriate instructional materials, careful monitoring, alignment with classroom instruction, and communication among classroom teachers, tutors, and parents.
414	437	EL/All/Differentiated Instruction	ELD	Among the goals of tutoring and other remedial programs are improved literacy skills (in both reading and writing), reading fluency and comprehension at grade level or above, significant gains in reading achievement, increased motivation, greater self-confidence in reading and writing, and ability to transfer literacy skills to other content areas.
415	438	EL/All/Differentiated Instruction	ELD	Research indicates that paraprofessionals can have a positive impact on student success when trained to provide structured one-on-one tutoring
416	439	EL/Differentiated Instruction	ELD	... bilingual paraprofessionals paired with monolingual teachers need time to communicate regularly with the classroom teacher under whose direction they work. The paraprofessionals and the teachers should discuss student needs and progress, alternative strategies, and the use of appropriate materials to help students access fully the core curriculum and acquire English.
417	439	EL/Differentiated Instruction	ELD	Preschool educators and day-care providers have a key responsibility... Adults can aid language development in children by creating a language-rich environment that includes opportunities for language use and interaction, focused stimulation on particular language features, routines that connect events and language, and social interaction between children
418	440	EL/All/Differentiated Instruction	ELD	Preschool programs and day-care-home experiences must, therefore, ensure that children have abundant opportunities to listen to stories, converse, play with language through rhymes and literature, talk about a variety of words and their meanings, hear and repeat correct language structures , gain understanding of the rich and varied forms of print, learn letters of the alphabet, and practice reading and writing behaviors.
419	441	EL/All/Differentiated Instruction	ELD	For preschool programs to promote effectively children's language and literacy development , preschool educators must participate in ongoing professional development, collaborate with elementary school colleagues, and engage in supportive interactions with families.
420	441	EL/All/Differentiated Instruction	ELD	A major premise of local control within the state's educational system centers on the quality of instruction offered to all students.
421	441	EL/Differentiated Instruction	ELD	Local educational agencies (LEAs) should establish a special priority for preventing reading difficulties affecting students from families living in poverty, students with disabilities, and English learners —all of whom constitute the fastest-growing segment of America's school population.

422	441	EL/All/Differentiated Instruction	ELD	At the very least LEAs must set high standards for instruction and programs in the language arts.
423	441	EL/All/Differentiated Instruction	ELD	Determining what is of “high” instructional quality should, however, result from research and demonstration and not from a consensus of opinion among content experts, curriculum organizations, or personnel in a state agency or local educational agency.
424	441-442	EL/All/Differentiated Instruction	ELD	This process should include a data-based management system for analyzing , reporting, and representing student performance data as a critical factor in determining a school’s success in the language arts.
425	442	EL/All/Differentiated Instruction	ELD	The school principal must know the essential elements of a research-based language arts program . In addition, he or she must establish a culture within the school in which effective research-based programs are valued and demanded by teachers, parents, administrators, and other stakeholders.
426	442	EL/All/Differentiated Instruction	ELD	The principals for kindergarten through grade three must establish the language arts, especially beginning reading, as a top priority for the curriculum .
427	442	EL/All/Differentiated Instruction	ELD	For grades four through eight and nine through twelve, the principals must establish the language arts as a priority for all students and implement a specially designed system of instruction (e.g., extended language arts or remedial reading support) for supporting students not proficient in the language arts.
428	442	EL/All/Differentiated Instruction	ELD	Although the school principal is responsible for staff support and resources , the deployment of these resources should be guided by the school’s literacy plan and priorities .
429	442-443	EL/All/Differentiated Instruction	ELD	As the school instructional leader, the principal should:
				• Understand and provide staff with information about the <i>English–Language Arts Content Standards</i> and research-based programs and interventions in the language arts. Provide staff with the time needed to discuss the standards and current research to establish and promote an understanding of instructional programs demonstrated to improve student achievement.
				• Build reflective practice among all faculty by (1) providing guidance and informed feedback on classroom instruction; and (2) facilitating and encouraging structured dialogue among faculty members about results-oriented instruction and strategies to help every student meet grade-level standards .
				• Maximize and protect instructional time for the language arts and ensure that adequate personnel and resources are available to support program implementation.
				• Provide time for monthly grade-level meetings that focus on assessing student work samples, progress-monitoring data, and articulation of the language arts standards throughout the school.
				• Provide leadership in defining and articulating the language arts program. A process should be established for (1) examining results for individual students ; and (2) using data to identify program needs and to ensure that all students receive sufficient instruction and support to achieve mastery.
				• Provide time for modeling effective instruction , training, and coaching teachers whenever possible. Time should also be provided for teachers to visit other classrooms at the school and at model implementation sites so that successful instruction can be observed.
				• Monitor the implementation process and anticipate future opportunities, needs, and problems through frequent classroom visits.
				• Establish schoolwide systems to ensure that students with special needs are (1) assessed early to determine need for additional and specialized instruction ; (2) monitored to determine when and if additional support is

				needed; and (3) included in all state, school district, and schoolwide assessments. • Align the instructional methods, materials, and schedules across programs and personnel to maximize learning.
430	444	EL/All/Differentiated Instruction	ELD	Experienced teachers need support in learning and applying new curriculum and instructional strategies , and new teachers and teacher candidates need even greater support in learning to teach reading and the language arts as they acquire the fundamentals of teaching.
431	445	EL/All/Differentiated Instruction	ELD	Knowledgeable and collaborative leadership within schools, school districts, counties, and regions is necessary to marshal the resources necessary to train, support, and coach California's professional teaching staff adequately.
432	445	EL/All	ELD	Schools may create partnerships with a variety of public and private organizations and agencies to seek support and participation in the education of California's children.
433	445	EL/All/Differentiated Instruction	ELD	Schools are encouraged to (1) use those kinds of community resources to provide the additional adult support that students need to meet their literacy requirements ; and (2) start to develop ideas about the workforce, careers, and students' relationships to their communities.
434	445	EL/All	ELD	When students work alongside others from their own communities to identify and solve local problems , they build civic responsibility and practice literacy skills. Literacy is improved when the students apply their language arts skills in their service-learning activities and perform research, read, write, and speak about their service projects and experiences.
435	445	EL/All/Differentiated Instruction	ELD	Through service-learning projects involving tutoring and mentoring , older students also support the literacy of younger students.
436	446	EL/All	ELD	Partnerships with business, civic, and professional organizations can also serve to keep schools focused on their mission—learning and reaching the goals of the literacy improvement plan.
437	446	EL/All	ELD	...high-quality materials should reflect the faces and resonate with the voices of learners in California, representing their diverse linguistic, cultural, and social backgrounds.
438	446	EL/All	ELD/Academic Language	Access to materials in the students' home languages promotes growth in concept development and academic language as the students acquire English as their second language.
439	446	EL/All/Differentiated Instruction	ELD	At every grade level classroom collections should reflect a wide variety of reading interests , favorite authors, and topics related to the instructional program. In the primary grades classroom resources must include large numbers of highly readable books and other items that allow students to practice and reinforce their growing literacy.
440	447	EL/All/Differentiated Instruction	ELD	Frequent access to extensive school library collections is an effective way to maintain fresh classroom collections, allow students to select books of personal interest, and keep reading motivation high.
441	447	EL/All/Differentiated Instruction	ELD	Classrooms are enhanced when supplied with adequate hardware, software, and Internet-based resources for students to use in language arts instruction. <i>Connect, Compute, and Compete</i> (CDE, 1996c) recommends a student-to-computer ratio of four to one and telecommunications access for students in every classroom and library. The recommendations are consistent with the federal technology goals: (1) modern computers and learning devices will be accessible to every student; (2) classrooms will be connected to one another and to the outside world; (3) educational software will be an integral part of the curriculum; and (4) teachers will be ready to use and teach with technology.

442	448	EL/All/Differentiated Instruction	ELD	Access to a well-developed book collection and electronic resources, selected with the guidance of a credentialed school library media teacher and housed in the school library media center, (1) allows teachers to help students broaden and extend their study of core works; and (2) allows students to benefit from a broad spectrum of reading choices to meet their learning needs.
443	448	EL/All	ELD	Students should be given access to outstanding examples of multicultural literature across genres to extend literary response and analysis.

CHAPTER 9: CONTENT OF CRITERIA FOR EVALUATING INSTRUCTIONAL MATERIALS READING/LANGUAGE ARTS/ENGLISH LANGUAGE DEVELOPMENT, KINDERGARTEN THROUGH GRADE EIGHT

Citation Number	Page Number	English Learner / All Students/ Differentiated Instruction References	English Language Development/ Academic Language References	Reading/Language Arts Framework Text Language:
444	451	EL/All/Differentiated Instruction	ELD/Academic Language	The new <i>Criteria</i> are designed to produce instructional materials that will help teachers to close the achievement gap that persists despite gains in reading/language arts achievement since the last adoption cycle of instructional materials.
445	451	EL/All/Differentiated Instruction	ELD/Academic Language	... the <i>Criteria</i> emphasize increased vocabulary, oral reading fluency, and writing.
446	451	EL/All/Differentiated Instruction	ELD/Academic Language	There is a deeper focus on the instructional needs of English learners, students with disabilities, struggling readers, and students who use African-American vernacular English.
447	451	EL/All/Differentiated Instruction	ELD	California is committed to the fact that the English language arts content standards are adopted for all our children.
448	451	EL/All/Differentiated Instruction	ELD	Each instructional program submitted for adoption must meet all appropriate program descriptions and all required criteria in five categories: 1) Alignment to the English-language arts content standards; 2) Program Organization; 3) Assessment; 4) Universal Access; and 5) Instructional Planning and Support.
449	453	EL/All/Differentiated Instruction	ELD/Academic Language	Instructional elements that reinforce and extend the Basic Program: <ul style="list-style-type: none"> • 30 minutes of extra support for English learners in kindergarten through grade eight • 30 minutes of extra support for struggling readers in kindergarten through grade eight • 15-20 minutes of Intensive Vocabulary Instructional Support in kindergarten through grade three • A minimum of 90 lessons each one lasting 15 minutes for each of the five sets of technical skills in a primary classroom Reading Intervention Kit for grades one through three (the same classroom kit for all three grade levels)
450	453	EL/All/Differentiated Instruction	ELD/Academic Language	This program (Program II) includes all content and the four instructional elements required in the Reading/Language Arts Basic Program plus additional required daily English language development (ELD) instruction.
451	453	EL/All/Differentiated Instruction	ELD/Academic Language	The additional ELD instruction includes one hour of daily instruction that is consistent with the <i>English-Language Arts Content Standards</i> and <i>Reading/Language Arts Framework</i> and assists students in acquiring English as quickly and efficiently as possible.
452	453	EL/All/Differentiated Instruction	ELD/Academic Language	Reading/Language Arts/English Language Development Basic Program materials must provide instructional content for 180 days of instruction...
453	454	EL/All/Differentiated Instruction	ELD/Academic Language	The English language development (ELD) instructional program (Program III) parallels the content of the Basic Program. Instructional materials are in a language other than English and are consistent with the content of the <i>English-Language Arts Content Standards</i> and the <i>Reading/Language Arts Framework</i> . There are

454	454	EL/All/Differentiated Instruction	ELD/Academic Language	<p>appropriate modifications for the primary language. These materials are intended for students on waiver and are designed to ensure students are successful in acquiring English. The materials also provide additional required daily ELD instruction consistent with the <i>English-Language Arts Content Standards</i> and the <i>Reading/Language Arts Framework</i>. ELD instruction assists students in acquiring English as quickly and efficiently as possible. Materials must provide instructional content for 180 days of instruction....</p> <p>This program (Program V) for English learners provides a stand-alone, intensive, accelerated reading/language arts program designed specifically for English learners in grades four through eight whose academic performance is two or more years below grade level. This program is designed to accelerate the learning of English and successful reentry into the Basic Program at grade level. Materials must provide instructional content for 180 days of instruction....</p>
455	455	EL/All/Differentiated Instruction	ELD/Academic Language	<p>The <i>Criteria</i> call for Basic Programs (Program I) designed for use by the classroom teacher as the comprehensive curriculum that will ensure that all students, including English learners, master the English-language arts content standards. The Basic Program must utilize instructional materials that are designed to foster universal access, which means the Basic Program curriculum is accessible to all students.</p>
456	455	EL/All/Differentiated Instruction	ELD/Academic Language	<p>This Basic Program (Program I), including required additional supporting instructional elements, may not be submitted as a partial or supplemental resource. It must incorporate the principles of universal access described in the <i>Reading/Language Arts Framework</i>, be based on research</p>
457	455	EL/All/Differentiated Instruction	ELD/Academic Language	<p>The Basic Program (Program I), curriculum in kindergarten through grade eight provides comprehensive guidance for teachers in providing effective, efficient, explicit, sequential, linguistically logical, and systematic instruction, practice, application, and diagnostic support in all skills and strategies at the appropriate grade levels as defined in the <i>English-Language Arts Content Standards</i>, <i>Reading/Language Arts Framework</i>, and this <i>Criteria</i>.</p>
458	456	EL/Differentiated Instruction	ELD/Academic Language	<p>Basic Programs must include four additional elements:</p> <ul style="list-style-type: none"> a. Struggling Readers Extra Support b. English Learners Extra Support c. Intensive Vocabulary Instructional Support d. Reading Intervention Kit
459	456	EL/Differentiated Instruction	ELD/Academic Language	<p>The purpose of these materials (<i>English Learner Extra Support</i>, Program I) is to provide guidance for teachers and support for students to allow them to successfully participate in and progress through the daily lessons from the Basic Program with their peers.</p>
460	456	EL/Differentiated Instruction	ELD/Academic Language	<p>Instructional materials provide comprehensive guidance for teachers and effective, efficient, and explicit instruction for struggling readers (any student experiencing difficulty learning to read and may include students who use African-American vernacular English, English learners, and students with disabilities). Instructional materials for struggling readers must be standards-aligned, assessment-based programs that lead to mastery of all the English-language arts content standards. These materials can be used to ensure that students will be successful in the Basic Program (Program I) curriculum.</p>
461	456	EL/Differentiated Instruction	ELD/Academic Language	<p>Support materials for struggling readers must provide the following:</p> <ul style="list-style-type: none"> a. 30 minutes of additional instructional materials daily

				<p>b. Teacher edition and student materials that reinforce and extend the regular classroom/Basic Program daily lessons</p> <p>c. Additional opportunities for checking for understanding</p> <p>d. Instruction to increase background knowledge, prerequisite skills, and concepts</p> <p>e. Additional opportunities for vocabulary development</p> <p>f. Additional practice in the key skills and strategies taught in the lesson</p> <p>g. Reteach material already taught in the lesson</p> <p>h. Preteach material that will be taught in the lesson</p> <p>i. ...standard academic English structures of oral and written language, including spelling and grammar</p>
462	456	ELD/Differentiated Instruction	ELD/Academic Language	<p>Instructional materials provide comprehensive guidance for teachers and effective, efficient, and explicit instruction for English learners. Instructional materials must be standards-aligned, assessment-based programs leading to mastery of all the English-language arts content standards.</p>
463	456	EL/Differentiated Instruction	ELD/Academic Language	<p>These extra support instructional materials are specifically designed daily lessons to preteach concepts, develop background knowledge, build academic vocabulary, and develop critical technical skills.</p>
464	456	EL/ Differentiated Instruction	ELD/Academic Language	<p>It is essential that students who are simultaneously learning English and reading language arts content have additional time for instruction and practice to master grade level content standards.</p>
465	456	EL/Differentiated Instruction	ELD/Academic Language	<p>Support materials for English learners must include the following:</p> <p>a. Materials that address the Beginning, Early Intermediate, Intermediate, and Early Advanced levels of English language proficiency at appropriate grade levels</p> <p>b. 30 minutes of additional instructional materials daily</p> <p>c. Teacher edition and student materials that are designed to reinforce and extend the regular classroom/Basic Program daily lessons.</p>
466	456	EL/Differentiated Instruction	ELD/Academic Language	<p>Materials that help teachers teach English learners to master the English-language arts content standards so learners can read, write, comprehend, and speak English for personal use and at the proficient level for academic schoolwork.</p>
467	457	EL/Differentiated Instruction	ELD/Academic Language	<p>Support materials provide additional explicit linguistic instruction in areas of difficulty for students, including:</p> <p>a. Survival vocabulary and language, including but not limited to, obtaining necessities, making requests, and understanding instructions (essential for newcomers)</p> <p>b. Language skills that are transferable from students' primary language to English and non-transferable skills</p> <p>c. Acquisition of academic vocabulary</p>
468	457	EL/Differentiated Instruction	ELD/Academic Language	<p>d. Phonological, morphological, syntactical, and semantic structures of English.</p> <p>The materials provide additional support in areas in which students are likely to have difficulty—primarily the following strands and substrands of the English-language arts content standards:</p> <p>a. Phonologically based spelling</p>

				<p>b. Listening and speaking comprehension</p> <p>c. Organization and delivery of oral communication</p> <p>d. Speaking applications</p> <p>e. Academic language</p> <p>f. Vocabulary and concept development</p> <p>g. Sentence structure</p> <p>h. Grammar</p>
469	457	EL/Differentiated Instruction	ELD/Academic Language	<p>Support materials provide additional vocabulary development (beyond vocabulary instruction in the Basic Program) for students in kindergarten through grade three who require extra support in vocabulary development. These instructional materials are intended to be an addition to the regular vocabulary lessons described in the Basic Program Descriptions and Criteria Category 1.</p> <p>The purpose of these materials is to increase the oral vocabulary of students with limited vocabulary which may include English learners, students with disabilities, struggling readers, and students who use African-American Vernacular English.</p>
470	457	EL/Differentiated Instruction	ELD/Academic Language	<p>...materials must build students' oral vocabulary by providing instruction in a wide range of meaningful vocabulary, explaining the meanings of unfamiliar words (beyond their reading vocabulary), allowing ample opportunities for students to discuss word meanings and use new words.</p> <p>For each grade level, programs provide a list of logically sequenced vocabulary words that will be taught and are beyond grade-level reading.</p> <p>Programs must establish a list of vocabulary words for each grade level and support/defend the lists with research.</p>
471	457	EL/Differentiated Instruction	ELD/Academic Language	<p>Teacher editions and student materials provide instructional resources and strategies for developing vocabulary through multiple readings by the teacher of narrative and engaging expository texts, followed by explicit and systematic instruction in oral discourse of the selected vocabulary.</p>
472	457	EL/Differentiated Instruction	ELD/Academic Language	<p>Intensive vocabulary instruction is research-based, direct, explicit, and systematic and includes:</p> <p>a. Weekly lesson plans for daily lessons</p> <p>b. Weekly lesson plans that include instruction in eight to ten words per week (kindergarten), ten to twelve words per week (grades one and two), and fifteen to eighteen words per week (grade three)</p>
473	457	EL/Differentiated Instruction	ELD/Academic Language	<p>Narratives and expository texts provided in the intensive vocabulary materials link to unit/themes in the Basic Program.</p>
474	457	EL/Differentiated Instruction	ELD/Academic Language	<p>Intensive vocabulary lessons must include the following:</p> <p>a. Development of students' listening and speaking vocabulary</p> <p>b. Instruction in words that are beyond student reading vocabulary</p> <p>c. 15 to 20 minutes of additional daily vocabulary instruction</p> <p>Materials include weekly lesson plans that include:</p> <p>a. Multiple readings by the teacher of one or two narrative or interesting expository texts with emphasis on</p>
475	457-458	EL/Differentiated Instruction	ELD/Academic Language	
476	458	EL/Differentiated Instruction	ELD/Academic Language	
477	458	EL/Differentiated Instruction	ELD/Academic Language	
478	458	EL/Differentiated Instruction	ELD/Academic Language	

			<p>developing oral vocabulary and opportunities for students to hear, use, and reflect on/discuss the meanings of the target words.</p> <p>b. Weekly oral pre- and post-assessments on new words</p> <p>c. During narrative/expository text readings, teachers provide simple definitions of target vocabulary words using language that is known by students.</p> <p>d. Materials provide opportunities for students to use words in individual and group responses over time and in different contexts.</p> <p>e. Materials include suggestions for periodic review and extended use of the words beyond the instructional time.</p>		
479	458	EL/All/Differentiated Instruction	ELD/Academic Language	<p>The Reading Intervention Kit is a classroom kit that provides sets of strategic intervention materials, one set for each of the five key technical skill domains of beginning reading, for efficient and effective use in tutorial or small-group instructional settings. <u>These materials focus on students in grades one through three who need reteaching and/or practice in one or more of the technical skill domains.</u></p> <p>The kit includes teacher and student editions that provide materials for instruction in the following beginning technical skills in reading as defined by the English-language arts content standards in kindergarten through grade three:</p> <p>a. Phonemic awareness and phonological awareness</p> <p>b. Phonics and decoding</p> <p>c. Oral reading fluency</p> <p>d. Vocabulary (including those words taught in grades one through three of the Basic Program)</p> <p>Reading comprehension skills</p> <p>The Reading/Language Arts/English Language Development Basic Program includes all content and the four additional instructional elements required in the Reading/Language Arts Basic Program <i>plus</i> the additional required one hour of daily English language development instruction.</p> <p>The additional one hour of English Language Development Instruction, Kindergarten Through Grade Eight shall undergo the following evaluations:</p> <p>a) English-Language Content Standards</p> <p>b) English Language Development Standards</p> <p>c) Attachment A: Matrix 3, English Language Development Instruction, Kindergarten Through Grade Eight.</p> <p>The English language development (ELD) instructional materials are consistent with and connected to the Basic Program and aligned to the <i>English-Language Arts Content Standards, English Language Development Standards</i> and <i>Reading/Language Arts Framework</i>. Materials shall demonstrate alignment to the ELA and ELD standards through the SBE-approved correlation matrices developed under SB 1113. (Attachment D, "ELA/ELD Standards Correlation Matrices" will be forthcoming.)</p> <p>(For additional guidance, see the Universal Access section (under "English Learners") for each grade in the <i>Reading/Language Arts Framework</i>).</p>	
480	458	EL/All/Differentiated Instruction	ELD/Academic Language		
481	458	EL/Differentiated Instruction	ELD/Academic Language		
482	458	EL/Differentiated Instruction	ELD/Academic Language		
483	458	EL/Differentiated Instruction	ELD/Academic Language		

484	459-460	EL/Differentiated Instruction	ELD/Academic Language	<p>ELD instructional materials must include the following features:</p> <ul style="list-style-type: none"> a. Lessons address the Beginning, Early Intermediate, Intermediate, and Early Advanced levels of English language proficiency at appropriate grade levels. b. Teacher edition and student materials are focused and efficient to ensure English learners acquire proficiency in English as quickly and effectively as possible. c. Additional ELD instructional support is given to English learners (beyond the Basic Program) for one hour daily. d. The one hour of daily instruction may be presented in smaller segments or lessons. For example, programs may provide daily instruction that includes two to four lessons that total one hour per day. <p>The ELD materials are designed to ensure students' mastery of the English-language arts content standards and include the following:</p> <ul style="list-style-type: none"> a. Instructional materials are connected to, and consistent with, the unit/theme of the Basic Program. b. Materials include instruction, practice, review, and application that lead to student acquisition of English. c. Instructional materials will allow opportunities for students to read, write, and discuss expository text. <p>These ELD materials must provide explicit, sequential, linguistically logical, and systematic instruction, practice, application, and diagnostic support in areas in which students are likely to have difficulty, including:</p> <ul style="list-style-type: none"> a. Phonemic awareness and phonics b. Oral reading fluency c. Word recognition and spelling d. Vocabulary and morphology e. Grammar and usage f. Listening and reading comprehension g. Sentence structure (aligned with narratives, reading passages, and writing assignments) h. Speaking and writing <p>ELD materials provide formal linguistic instruction, practice, and opportunities for application, including:</p> <ul style="list-style-type: none"> a. Survival vocabulary and language, including, but not limited to, obtaining necessities, making requests, and understanding instructions (essential for newcomers) b. Skills that are transferable from students' primary language to English and non-transferable skills c. Acquisition of academic vocabulary d. Phonological, morphological, syntactical, and semantic structures of English e. Oral language development <p>The ELD Teachers Guide shall include the following:</p> <ul style="list-style-type: none"> a. Background information for teachers regarding the various profiles of English Learners, including but
485	460	EL/Differentiated Instruction	ELD/Academic Language	
486	460	EL/Differentiated Instruction	ELD/Academic Language	
487	461	EL/Differentiated Instruction	ELD/Academic Language	
488	461	EL/Differentiated Instruction	ELD	

489	461	EL		not limited to newly arrived, long term, older learners. b. Flexible Grouping options c. Language transfer issues Appropriate strategies for English learners Publishers may develop comprehensive reading/language arts programs in the key languages of the state for students in kindergarten through grade eight on waiver as defined by Proposition 227.
490	461	EL/Differentiated Instruction	ELD	Primary Language/English Language Development Basic Program parallels the Reading/Language Arts/English Language Development Basic Program (RLA/ELD) described in program type II and is aligned with the <i>English-Language Arts Content Standards</i> and the <i>Reading/Language Arts Framework with appropriate modifications for the primary language</i> .
491	461	EL/Differentiated Instruction	ELD	The Primary Language/English Language Development Program shall undergo the following evaluations: a. Educational content review based on the Program Description in Section I b. Criteria (all categories) in Section II c. Attachment B, "History-Social Science and Science Content Standards, Kindergarten through Grade Three" d. Attachment C, Table 1: "Curriculum Content: Kindergarten Through Grade Three" and Table 2: "Curriculum Content: Grades Four Through Eight." e. <i>English-Language Arts Content Standards</i> f. <i>Reading/Language Arts Framework</i>
492	461	EL/Differentiated Instruction	ELD	The additional one hour of English Language Development Instruction , Kindergarten Through Grade Eight shall undergo the following evaluations: d) English-Language Content Standards e) English Language Development Standards f) Attachment A: Matrix 3, English Language Development Instruction, Kindergarten Through Grade Eight.
493	461	EL/Differentiated Instruction	ELD	This Primary Language program may not be submitted without ELD instructional materials or as a partial or a supplemental resource. This Primary Language program may not be submitted as part of the Basic Program. This program stands alone and will be submitted and evaluated separately.
494	461	EL/Differentiated Instruction	ELD	ELD instruction is consistent with the <i>English-Language Arts Content Standards, English Language Development Standards</i>, and the <i>Reading/Language Arts Framework</i>; and provides one hour of daily instruction to assist English learners in acquiring proficiency in English; and ensures student mastery of the standards.
495	462	EL/All/Differentiated Instruction	ELD/Academic Language	The Intensive Intervention Program in Reading/Language Arts is designed to be a stand-alone, intensive, accelerated reading/language arts program. This program provides two and one-half hours to three hours of daily instruction designed to address the instructional needs of students in grades four through eight whose reading achievement is two or more years below grade level (including students who use African-American vernacular English, English learners, struggling readers, and students with disabilities).
496	462	EL/All/Differentiated Instruction	ELD/Academic Language	There are two purposes of intervention instruction for students in grades four and above who are two or more years below grade level in reading achievement: 1) to teach students to read ; and 2) to teach students those grade-level English-language arts content standards they have not previously mastered.

497	462	EL/All/Differentiated Instruction	ELD/Academic Language	This program is designed to accelerate student reentry into the Basic Program within two years or less. Students who are two or more years below grade level will not benefit from grade-level instruction in the Basic Program because grade-level reading and instructional materials in the Basic Program are beyond the students' reading comprehension level. Publishers choosing to submit an Intensive Intervention Program in Reading/Language Arts must submit it as a stand-alone program that will be evaluated separately. This curriculum must incorporate the principles of universal access described in the <i>Reading/Language Arts Framework</i> , be based on research ...
498	462	EL/All/Differentiated Instruction	ELD/Academic Language	The program must have multiple levels/points of entry to appropriately address the skill levels of students in grades four through eight .
499	462	EL/All/Differentiated Instruction	ELD/Academic Language	Instructional materials will provide opportunities for students to read, write, and discuss expository text
500	462	EL/All/Differentiated Instruction	ELD/Academic Language	The Intensive Intervention Program for English Learners is designed to be a stand-alone intensive reading/language arts program . This program provides two and one-half hours to three hours of daily instruction developed specifically for English learners in grades four through eight whose academic achievement is two or more years below grade level . This stand-alone reading/language arts intervention program addresses literacy and language development.
501	463	EL/Differentiated Instruction	ELD/Academic Language	The materials incorporate the elements of English language development described below and are designed to provide intensive, accelerated, and extensive English language development that complements and supports reading/language arts instruction.
502	463	EL/Differentiated Instruction	ELD/Academic Language	This program may not be submitted as part of the Basic Program .
503	463	EL/Differentiated Instruction	ELD/Academic Language	This program is designed to accelerate student reentry into the Basic Program within two years or less. Publishers choosing to submit an Intensive Intervention Program for English Learners must submit it as a stand-alone program that will be evaluated separately.
504	463	EL/Differentiated Instruction	ELD/Academic Language	The Intensive Intervention Program for English Learners shall undergo the following evaluations: a. Educational content review based on the Program Description in Section I b. Criteria (all categories) in Section II c. Attachment A, "Matrix 2: Intensive Intervention for English Learners, Grades Four Through Eight" d. Attachment C: Table 3, "Curriculum Content, Intensive Intervention, Grades Four Through Eight." e. <i>English-Language Arts Content Standards</i> f. <i>Reading/Language Arts Framework</i>
505	463	EL/Differentiated Instruction	ELD/Academic Language	This curriculum must incorporate the principles of universal access , be based on research...
506	464	EL/Differentiated Instruction	ELD/Academic Language	The program must have multiple levels/points of entry in order to appropriately address the skill levels of students in grades four through eight.
507	464	EL/Differentiated Instruction	ELD	This program must emphasize academic language, vocabulary and concept development, sentence structure, grammar, organization and delivery of oral communication, and speaking applications .
508	464	EL/Differentiated Instruction	ELD/Academic Language	

Draft: *Reading Language Arts Framework*

References to English learners, English language development, in differentiated instruction/Universal access for all students
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509	464	EL/Differentiated Instruction	ELD/Academic Language	Materials guide the teacher on how to instruct English learners to master the English-language arts content standards so learners can read, write, comprehend, and speak English for personal use and at the proficient level for academic schoolwork .
510	464	EL/Differentiated Instruction	ELD/Academic Language	The program must include teacher and student editions and focus on instruction to assist English learners in developing proficiency in the English language and the concepts and skills contained in the <i>English-Language Arts Content Standards</i> . Emphasis is placed on: a. Instruction in the skills that are transferable from students' primary language to English and non-transferable skills b. Acquisition of academic vocabulary c. Phonological, morphological, syntactical, and semantic structures of English . These materials must provide explicit, sequential, linguistically logical, and systematic instruction, practice, application, and diagnostic support in areas in which students are likely to have difficulty —primarily the following strands and substrands of the English-language arts content standards, grades one through six: a. Phonemic awareness and phonics b. Word recognition and spelling c. Oral reading fluency d. Vocabulary and morphology e. Grammar and usage f. Listening and reading comprehension g. Sentence structure (consistent with narratives, reading passages, and writing assignments) h. Speaking and writing
511	464	EL/Differentiated Instruction	ELD/Academic Language	Instructional materials...designed to ensure that all students master each of the English-language arts content standards.... Instructional materials reflect and incorporate the content of the <i>Reading/Language Arts Framework</i> .
512	466	EL/All/Differentiated Instruction	ELD/Academic Language	Instructional materials incorporate the content described in Attachment A and Attachment B, and Attachment C Instruction reflects current and confirmed research
513	466	EL/All/Differentiated Instruction	ELD/Academic Language	Sufficient instructional time is allotted to content standards that require extensive teaching and are clear prerequisites for later content standards.
514	466	EL/All/Differentiated Instruction	ELD/Academic Language	The program demonstrates an explicit relationship between academic language development, reading selections, and written and oral expression
515	466	EL/All/Differentiated Instruction	ELD/Academic Language	Instructional materials include activities that relate directly to the learning objectives . Extraneous material is kept to a minimum.
516	466	EL/All/Differentiated Instruction	ELD/Academic Language	
517	466	EL/All/Differentiated Instruction	ELD/Academic Language	
518	466	EL/All/	ELD	

519	466	EL/AII/Differentiated Instruction	ELD	Publishers will include, for those students who need them, learning tools for phonemic awareness (such as phoneme phones and letter tiles).
520	466	EL/AII	ELD	Student materials include opportunities for daily oral reading fluency practice
521	466	EL/AII	ELD	High-frequency words introduced in pre-decodable and decodable texts are taken from a list of the most commonly used words in English, prioritized by their utility.
522	466	EL/AII	ELD	Spelling lessons are based on the phonemic and morphologic concepts taught at appropriate grade levels as defined in the English-language arts content standards.
523	467	EL/AII	ELD/Academic Language	Program provides direct, explicit, and systematic instruction and opportunities for student practice and application in key vocabulary connected to reading and writing instruction, including academic vocabulary from the <i>History-Social Science</i> and <i>Science Content Standards</i> that are addressed in the Basic or Intervention Programs.
524	467	EL/AII	ELD/Academic Language	Program includes weekly lesson plans for daily vocabulary lessons and a weekly list of target vocabulary words that will be taught.
525	467	EL/AII	ELD/Academic Language	Instructional resources provide strategies for teachers and student materials for developing academic language (i.e. the more difficult, abstract, technical, and specialized vocabulary and concepts used in texts and tests).
526	467	EL/AII	ELD/Academic Language	Materials provide opportunities for students to use and apply words in individual and group responses, over time, and in different contexts.
527	467	EL/AII	ELD/Academic Language	Materials include suggestions for periodic review and extended use of the words beyond the instructional time.
528	467	EL/AII	ELD/Academic Language	Program provides instruction designed to foster word consciousness and self-monitoring in attending to unknown words.
529	467-468	EL/AII	ELD	To promote language development , instructional materials in kindergarten through grade two include direct, explicit, and systematic instruction and opportunities for practice and application in the following: <ul style="list-style-type: none"> a. Classification of grade-appropriate words into categories b. Word-learning strategies c. Word meaning including the relationship and association of words to other words In addition, in grade two, instruction in common antonyms and synonyms ; knowledge of individual words in unknown compound words to predict their meaning; the meaning of simple prefixes and suffixes ; and identification of simple multiple-meaning words
530	468	EL/AII	ELD/Academic Language	To promote language development , instructional materials in grades three and beyond include direct, explicit, and systematic instruction and opportunities for practice and application in the following: <ul style="list-style-type: none"> a. Word structure/analysis of prefixes, suffixes, base and root words, derivatives, and continuing opportunities for student practice in antonyms and synonyms as well as identification and usage of multiple-meaning words with grade-level expectations b. Word meaning including the relationship and association of words to other words c. Phonological, morphological, syntactical, and semantic structures of English d. Direct, explicit, and systematic instruction and opportunities for student practice in identification of origins and meanings of foreign words frequently used in English, beginning in grade six, in use of Greek, Latin, and Anglo-Saxon word roots and affixes as related to content-area words, beginning in grade seven; and in analyzing

				<p>idioms, analogies, metaphors, and similes to infer literal and figurative meanings of phrases, beginning in grade eight</p> <p>e. Direct teaching of key academic vocabulary with grade-level expectations</p> <p>f. Opportunities for guided practice, independent practice, and application (with teacher feedback) using new and previously taught academic vocabulary in reading, writing, listening, and speaking activities, and multiple exposures to key academic vocabulary through periodic review and distributed practice of previously taught academic words.</p> <p>g. Direct instruction, student practice, and opportunities for application in word-learning strategies and skills ...selection of expository texts that are read to students or that students read.</p> <p>Reading selections, including those read to students and those that students read, are of high quality, interesting, motivational, multicultural, and age-appropriate for students.</p> <p>The program includes daily explicit instruction in writing with additional time for practice and application during independent work time.</p> <p>Instructional materials provide strategies for teachers to develop students' academic language, including more difficult, abstract, technical, and specialized vocabulary and concepts.</p> <p>The teacher editions and student materials provide instruction and practice opportunities to ensure that students learn the specific academic language associated with all genres of reading and writing....</p> <p>Materials include instruction in the language patterns and structures present in the genre studied. The materials provide discussion prompts related to these two reciprocal reading and writing elements of lessons that support students as they actively use the academic language associated with the genre being studied.</p> <p>Materials provide guidance to teachers about when and how in the instruction process to give feedback to students on their writing.</p> <p>Instructional materials in writing skills and strategies provide direct, explicit, and systematic instruction, practice, and application appropriate to grade-level content standards and include:</p> <p>a. Sentence fluency</p> <p>b. Sentence variety</p> <p>c. Paragraph and essay structure, organization, and coherence</p> <p>d. Word choice</p> <p>Scaffolding that leads students into independent grade-level writing through timely and explicit feedback</p> <p>Assessing students' ability to meet the grade-level writing application standards using application-specific prompts</p> <p>Instructional materials include direct, explicit, and systematic instruction and opportunities for student practice of the written and oral English language conventions....</p> <p>Program provides daily opportunities for writing to practice newly acquired skills and applications and review previously learned skills and strategies.</p>
531	468	EL/All	ELD/Academic Language	
532	468	EL/All	ELD/Academic Language	
533	468	EL/All/Differentiated Instruction	ELD/Academic Language	
534	469	EL/All	ELD/Academic Language	
535	469	EL/All/Differentiated Instruction	ELD/Academic Language	
536	469	EL/All	ELD/Academic Language	
537	469	EL/All	ELD	
538	469	EL/All	ELD	
539	470	EL/All/Differentiated Instruction	ELD	
540	470	EL/All	ELD	
541	470	EL/All	ELD	
542	470	EL/All	ELD	

543	471	EL/All/Differentiated Instruction	ELD	Sequential organization and a coherent instructional design of the reading/language arts program provides structure for what students should learn each year and allows teachers to teach the reading/language arts instruction efficiently and effectively. English learners , students with disabilities, students who use African-American Vernacular English, struggling readers, and other students at risk of not mastering grade level academic content need to be clearly and directly taught. They need to be able to anticipate what comes next in the instructional sequence and what is expected of them so they can focus all their attention on learning the new academic content, skills, and strategies presented in the lessons. The instructional design described below serves as the scaffold for students with diverse learning needs.
545	473	EL/All/Differentiated Instruction	ELD/Academic Language	Teacher editions and student materials provide the following assessments: ... Diagnostic screening assessments (usually norm-referenced) for the six technical skill areas for use with selected students for addressing instructional needs .
546	473	EL/All/Differentiated Instruction	ELD/Academic Language	... Intensive Intervention Programs , which must have multiple levels/points of entry, must also provide placement and exit assessments designed to help determine the appropriate instructional level for entry into and exit from the program .
547	475	EL/All/Differentiated Instruction	ELD/Academic Language	Progress-monitoring assessments for English language development Instruction in Basic Programs II and III must be designed to provide teachers with information on instructional effectiveness and monitor student progress at the end of each unit/theme or set of lessons every six to eight weeks. Progress-monitoring assessments are based on content taught in the unit/theme or set of lessons and, when appropriate, previously taught skills and strategies.
548	475-476	EL/All/Differentiated Instruction	ELD/Academic Language	Progress-monitoring assessments for English language development Instruction measure progress in reading, writing, listening, and speaking in English as described in Attachment A, "Matrix 3: English-Language Development Instruction, Kindergarten Through Grade Eight."
				The progress-monitoring assessments must include a minimum of five subtests, each subtest having a minimum of ten items that are aligned with structured lessons focused on the following reading/language arts skills:
	476	EL/All/Differentiated Instruction	ELD/Academic Language	a. Phonemic awareness and phonics b. Oral reading fluency c. Word recognition and spelling d. Vocabulary and morphology e. Grammar and usage g. Sentence structure aligned with narratives, reading passages, and writing assignments f. Listening and reading comprehension h. Writing
549	477	EL/All/Differentiated Instruction	ELD/Academic Language	The goal of reading/language arts programs in California is to ensure universal access to high-quality curriculum and instruction for all students so they can meet or exceed the state's English-language arts content standards. To reach that goal, instructional materials must provide teachers with the necessary content and pedagogical tools to teach all students to master the English-language arts content standards.
550	477	EL/All/Differentiated Instruction	ELD/Academic Language	Teachers need assistance in using assessments for planning instruction, determining effective grouping strategies, implementing other strategies for meeting the instructional needs of students , and measuring the effectiveness of instruction.
551	477	EL/All/Differentiated Instruction	ELD/	Specifically, instructional strategies must meet the needs of 1) struggling readers (all students experiencing

		Instruction		difficulty learning to read and may include students who use African-American vernacular English, English learners , and students with disabilities); 2) students in grades four through eight who are two or more years below grade level in academic achievement; 3) advanced learners; and 4) English learners .
552	477	EL/All/Differentiated Instruction	ELD/	The Basic Program curriculum must encompass a range of materials for teacher and student editions sufficient to meet the instructional needs of students at various advanced, benchmark, strategic, and intensive levels of performance .
553	477	EL/All/Differentiated Instruction	ELD	Intensive Intervention Program materials must encompass a range of materials for teacher and student editions sufficient to meet the instructional needs of students at various levels of performance .
554	477	EL/All/Differentiated Instruction	ELD	Basic Program instructional materials present comprehensive guidance for teachers in providing effective, efficient instruction for all students .
555	477	EL/All/Differentiated Instruction	ELD	Materials must be constructed to meet the instructional needs of those who enter school at, above, or one or more grade levels below the content standards and therefore are adaptable to each student's point of entry.
556	477	EL/All/Differentiated Instruction	ELD	All suggestions and procedures for meeting the instructional needs of students are not to be added as superficial afterthoughts to the main focus of instruction. Rather, the instructional materials are constructed so that the teacher is not expected to create extensive modifications in order to meet the learning needs of a full range of students.
557	478	EL/All/Differentiated Instruction	ELD	<p>The following design principles are guidelines for publishers to use in creating materials that will allow access for all students, including English learners, students with disabilities, struggling readers, and students who use African-American Vernacular English to ensure they master the English-language arts content standards. <i>All programs must include the following features:</i></p> <ol style="list-style-type: none"> Instructional materials incorporate these features: <ol style="list-style-type: none"> Optimal opportunities for teachers to scaffold instruction and check for understanding Guidance on use of preteach, reteach, review, and accelerated pace of program options Coherence and consistency in the design of the weekly and daily lesson planner and the teaching routines and procedures for program components within a grade and across grade levels, as appropriate Ample background information on key skills and concepts Sufficient practice for all skills and strategies taught with additional practice for those who require it Corrective feedback during all phases of instruction, practice, and application Emphasis on ample opportunities for practice and use of vocabulary words to support vocabulary acquisition and language development Assistance with organizing and sorting words and concepts to support vocabulary acquisition and language development. Instructional materials use "considerate text" design principles that are consistent by grade and across grade levels: <ol style="list-style-type: none"> Adequate titles for each selection

				<p>b. Introductory subheadings for chapter sections</p> <p>c. Introductory paragraphs</p> <p>d. Concluding or summary paragraphs</p> <p>e. Complete paragraphs including clear topic sentence, relevant support, and transitional words and expressions (e.g., <i>furthermore</i>, <i>similarly</i>)</p> <p>f. Effective use of typographical aids - boldface print, italics</p> <p>g. Adequate, relevant visual aids connected to the print: illustrations, photos, graphs, charts, maps</p> <p>h. Manageable versus overwhelming visual and print stimuli</p> <p>i. Identification and highlighting of important terms</p> <p>j. List of reading objectives or focus questions at the beginning of each reading selection</p> <p>k. List of follow-up comprehension and application questions</p>
558	478	EL/All/Differentiated Instruction	ELD	<p>Explain in the teacher edition that there is a variety of ways for students with special instructional needs to use the materials and demonstrate their competence (e.g., physically forming letters for students who have dyslexia or who have difficulties writing legibly or spelling words). The teacher edition may suggest modifications so students have access to the materials and can demonstrate their competence. Examples of modifications of means of expression might include (but are not limited to) student use of computers to complete pencil and paper tasks, use of on-screen scanning keyboards, enlarged keyboards, word prediction, and spellcheckers.</p>
559	480-481	EL/All/Differentiated Instruction	EL	<p><i>Teacher editions must include the following:</i></p> <ol style="list-style-type: none"> 1. Instructional routines and procedures are based on current and confirmed research, as defined in <i>Education Code</i> Section 44757.5(j). 2. Instructional materials provide a clear road map for teachers to follow when planning instruction. 4. ... The teacher edition provides guidance on what to teach, how to teach, and when to teach. 5. The teacher edition provides guidance on appropriate opportunities in the daily lesson for checking for understanding. 10. The program includes suggestions for parents or caregivers on how to support student achievement. They should be designed so that families can receive specific information and support for extending their children's learning at home. The program should include materials that teachers can use to inform families about the <i>English-Language Arts Content Standards</i>, the <i>Reading/Language Arts Framework</i>, program-embedded assessments, and the degree to which students are mastering the standards. 11. Preteaching, reteaching, extension, and acceleration activities are clearly labeled. 12. Materials describe grouping strategies for flexible small-group instruction. 13. Teacher edition includes guidance for teachers for implementing reading activities that build oral reading fluency.

			<p>15. Teacher edition provides samples of student writing which demonstrate end-of-grade-level sophistication of writing genres.</p> <p>16. Teacher support materials provide directions for explicit teaching of writing strategies, conventions, and specific applications.</p> <p>17. Teacher support materials include demonstrations of writing strategies, including the writing process.</p> <p>18. Teacher editions include strategies for providing timely teacher feedback about student writing and specific information about what has been done well with suggestions for “next steps.”</p> <p>19. Teacher editions clearly reference, explain, and provide the location of additional instructional materials and program components designed to provide extra support for students who require it (e.g., English learners, students who use African-American vernacular English, struggling readers, and students with disabilities).</p> <p>20. Teacher editions for additional instructional materials provide daily lesson guidance regarding the use of instructional materials to support, develop, and provide additional instruction and sufficient practice of key concepts, skills, and strategies for English learners and struggling readers.</p> <p>21. To support scaffolded instruction for English learners, students with disabilities, struggling readers, and students who use African-American Vernacular English and to provide teachers with guidance on scaffolding instruction, all suggestions and procedures for meeting the instructional needs of all students are ready to use with minimum modifications.</p> <p>22. Program provides a linguistic contrastive analysis chart in the teacher edition that shows and explains how new or difficult sounds and features of the English language are taught and reinforced. Comparisons with the five or more of the most common languages in California and African-American vernacular English will be incorporated as appropriate, accentuating transferable and non-transferable skills.</p> <p>23. Program provides teachers with a cassette, CD, other audio recording, or video that demonstrates the correct pronunciation of all the sounds taught.</p> <p>25. High-quality literature, including but not limited to selections reflective of California’s diverse cultural population, is an integral part of language arts instruction at every grade level.</p> <p>30. A list of books for independent reading that spans at least three grade levels and matches the topics of the units is included.</p>
560	483	EL/All/Differentiated Instruction	<p>Matrix 1: Intensive Intervention in Reading/Language Arts, Grades Four Through Eight</p> <p>Reading intervention must be taught strategically and intentionally. It is essential that students in grades four through eight who are two or more years below grade level gain the necessary skills through intensive intervention and adequate instructional time to be successful in the Basic Program at their grade level.</p> <p>This matrix includes requirements regarding what English-language arts content standards must be addressed and guidance from the <i>Reading/Language Arts Framework</i> about research-based instruction and support for students who are two or more years below grade level in reading. (See: <i>RLA Framework guidance for universal access for students with reading difficulties</i>)</p>

561	486	EL/All/Differentiated Instruction	EL	<p>Matrix 2: Intensive Intervention for English Learners, Grades Four Through Eight</p> <p>English learners have as their goal developing proficiency in English and in the concepts and skills contained in the <i>English–Language Arts Content Standards</i>. To learn English and achieve mastery of the standards, students must participate in instructional programs that combine skill and concept development in both English literacy and the English language. English learners whose academic achievement is two or more years below grade level require focused and efficient instruction in the features of English language and literacy through teacher modeling, teacher-directed instruction, and guided and independent practice. It is essential that English learners have the opportunity to gain the skills necessary to be successful in the Basic Program, at grade level, through intensive intervention and adequate instructional time.</p> <p>This matrix includes requirements regarding what English-language arts content standards must be addressed and guidance from the <i>Reading/Language Arts Framework</i> about instruction and support for students learning English. (See: <i>RLA Framework guidance for universal access for students with reading difficulties</i>)</p>
562	489	EL/All/Differentiated Instruction	EL	<p>Matrix 3: English Language Development Instruction, Kindergarten Through Grade Eight</p> <p>The English-language arts content standards illustrate the complexity of teaching the language arts and the critical and integral relation of earlier and later skills. The standards are mastery standards, meaning that students should master or be proficient in the knowledge and skills specified in a particular standard, at least by the end of the designated grade. Instruction to develop such proficiency is not, however, restricted to a specific grade. Publishers and teachers should consider the prerequisite skills and sequence of instruction students will need to master a standard by the end of the grade and introduce and sequence instruction within and between grades to ensure mastery at least by the grade in which the standard is identified. Multiple components must be integrated to create a comprehensive program.</p> <p>This matrix identifies the content of the additional hour of daily English language development instruction that is required in the Reading/Language Arts/English Language Development Basic Program and in the Primary Language/English Language Development Basic Program. The matrix includes requirements regarding what English-language arts content standards must be addressed and guidance from the <i>Reading/Language Arts Framework</i> about instruction and support for students learning English.</p>

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HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA



STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, JANUARY 10, 2007
3:03 P.M.

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, JANUARY 10, 2007

3:03 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCESMEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR ROY ASHBURN, Vice Chair

SENATOR GIL CEDILLO

SENATOR ROBERT DUTTON

SENATOR ALEX PADILLA

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

SUSIE SWATT, Consultant to SENATOR ASHBURN

DAN SAVAGE, Consultant to SENATOR CEDILLO

CHRIS BURNS, Consultant to SENATOR DUTTON

BILL MABIE, Consultant to SENATOR PADILLA

ALSO PRESENT

GEORGE W. CAMPBELL, Member
Southwest Low Level Radioactive Waste Commission

KENNETH G. VADNAIS, Member
Southwest Low Level Radioactive Waste Commission

JEFFREY A. DANZINGER, Member
California Integrated Waste Management Board

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: Okay, we have three Governor's Appointees appearing today. The first two are at the Southwest Low Level Radioactive Waste Commission.

I'd like to see a uniform that could get all that on there.

[Laughter.]

CHAIRMAN PERATA: Would you like to come forward. George Campbell and Kenneth Vadnais; correct? Close?

MR. VADNAIS: Vad-nay, sir.

CHAIRMAN PERATA: Not even near.

MR. VADNAIS: One of those good French names with the extra letters you don't need.

CHAIRMAN PERATA: Yes, you always subscribe to those vowels.

Mr. Campbell, in alphabetical order you go first.

MR. CAMPBELL: As you know, my name is George Campbell, and I appreciate the opportunity to get to meet with you all today.

I've been active, very active, in my local community, both in public and community matters. I was the President of the Manchester Union School Board until 2005, when I became a member of the Redwood Coast Fire Board. I'm also the lay leader and a lay speaker and a soloist at our local Methodist Church. I'm fairly actively involved in our community.

I retired in 2003 from Lawrence Livermore

1 National Laboratory, and after that time decided I need to --
2 needed to spend some time to give back to the state from the
3 expertise that I'd gained in my career.

4 I spent all of my career working and dedicating
5 my time to environment, safety and health, and protection of
6 workers and the public.

7 As far as the commission goes, my goals are to,
8 one, to help the state ensure that the trail of low-level
9 radioactive waste is indeed transported safely, or exported out
10 of the state to licensed facilities, also to help -- help
11 establish a planning process for the Commission in terms of any
12 new requirements that might come from the state, or training,
13 and also to help to improve our ability to interact and deal
14 with the public.

15 And I consider it a great honor to have been
16 appointed to this position by the Governor, and I hope that as a
17 result of this hearing, you all will be able to recommend me for
18 confirmation by the full Senate.

19 Thank you.

20 CHAIRMAN PERATA: Thank you.

21 MR. VADNAIS: My name is Ken Vadnais. I'm a
22 resident of Santa Barbara, California.

23 More than half a century ago I was born in this
24 state. This is my home. I love it very much.

25 And so, it may come as a surprise that until
26 yesterday, I'd never set foot in this building. I feel almost a
27 tingle of the energy of those that have worked here and done so
28 much for this state.

CHAIRMAN PERATA: Check with your doctor when you leave here.

[Laughter.]

MR. VADNAIS: And I know that when the very first legislatures held their meetings here, they were worried about many of the same problems that you're worried about. They were concerned about immigration, education, taxes. But one thing I know they were not concerned about is low-level radioactive waste, and that is because all of it that exists in the world today has basically been generated in my lifetime.

Now, radiation is a very ethereal kind of thing. You can't see it; you can't smell it; you can't taste it. And I've spent a good part of my career, more than half of it, developing instrumentation to be able to detect it.

If you make a circle with your fingers about that big around, every second about 100 gamma rays are going to fly through it. Now, that radiation is coming from the environment around you: Potassium, thorium, uranium, things in the soil, things in the walls.

But that natural background that you see has been altered slightly in the last fifty years. It isn't very difficult for me to go up on the roof of this building with a fairly simple instrument and detect cesium that's in the atmosphere left over from the nuclear testing of the 1950s.

The steel in this room if it was made after 1945 is contaminated with small amounts of radioactive cobalt. Now, back in the '40s, if you weren't throwing up, you hadn't had a dose of radiation.

1 My friend, my colleague George here, as a health
2 physicist, can tell you that today any radiation is considered
3 potentially hazardous. And the goal is to reduce that amount as
4 much as is possible. That is the goal. This stuff is
5 dangerous, and we have to keep track of it.

6 Now, if you are undoubtedly wondering why I would
7 want to be on a commission in charge of this, there's no pay in
8 this position, it's not an influential -- this not a rule-making
9 body. This not an organization with a great deal of authority.
10 I can assure you there are no tickertape parades for Low Level
11 Radioactive Waste Commissioners when they come to town.

12 In my particular case, the only motivation is
13 public service. And to expand on that slightly, in the third row
14 back on that side, there are two little six-year-olds, a boy and
15 a girl. They're twins. They were born in the year 2000. Those
16 are my kids, Tom and Hanna.

17 And you probably can't tell, I'm not the youngest
18 father you've ever seen. We mid-term, mid-life parents cherish
19 our children, and we realize that we're training our
20 replacements. That may not be a pretty picture, but that's the
21 truth. They will replace me someday.

22 And I think they deserve a world that is not
23 unalterably tainted by radioactive materials that we, through
24 our misjudgment and short-sightedness, have let get into the
25 environment.

26 Now, I and my family last night watched the State
27 of the State address. Senator, we heard your comments
28 afterwards. And I want to tell you all, this is one Californian

1 that is very appreciative of what you're doing. History is
2 being made here. And you have some very, very hard problems
3 that you're going to be working on.

4 If there's any way I can help you, I would like
5 to do that. And I have to in my capacity as a member of this
6 commission tell you that there is another really hard one coming
7 down the road, and that is low-level radioactive waste.

8 You are probably aware that all of the Class B
9 and C, which is the most hazardous radioactive materials, have
10 been leaving the state for many years and going elsewhere,
11 because we have no place here to dispose of them. And the
12 facility where it is being disposed of is closing in 2008.

13 And when that happens, in the short-term you will
14 see nothing. Nothing is going to change. The people in the
15 over 2,000 licensed facilities, facilities that hold this, are
16 going to find places to put it.

17 But in the long-term, we're creating in effect
18 many low-level radioactive waste disposal sites throughout this
19 state, and I'm concerned about that.

20 And I think you're going to have to face that
21 very tough issue, because the commission is not the responsible
22 decision making authority here. You guys are the decision
23 making authority. All we can do is advise you. All we can do
24 is tell you what the state of the situation is and where it's
25 going.

26 And so, my goals for this commission, if you
27 will, is that at some distant time the grandchildren and
28 great-grandchildren of those six-year-olds will be able to hold

1 up their hands like this, and the background radiation is going
2 to be about 100 gamma rays, and not one gamma ray more because
3 of our missighted mismanagement.

4 And while I am on this commission, even if it's
5 only for another couple of days, I want you to know, and hear me
6 well, that I serve one interest and one interest alone: That is
7 the safety and the well being and the health of the people of
8 this state, both now and in the future.

9 CHAIRMAN PERATA: Thank you.

10 I'll give you a little tip in case you ever do
11 get appointed to a committee that pays something, have your kids
12 sit in the front row.

13 [Laughter.]

14 CHAIRMAN PERATA: The gentleman behind you is a
15 veteran. He knew how to do that.

16 Would you like to introduce your family
17 appropriately?

18 MR. VADNAIS: They would be mortified, sir, if I
19 did.

20 CHAIRMAN PERATA: I don't know. They look pretty
21 primed and ready to me, but you have to go home with them. I
22 don't.

23 [Laughter.]

24 MR. VADNAIS: You're right. I should.
25 The boy is Thomas; the girl is Hanna; and the
26 lovely lady in between is my wife Melora.

27 CHAIRMAN PERATA: Welcome.

28 And Mr. Campbell, do you have any family with

1 you?

2 MR. CAMPBELL: No, I don't. They're teaching
3 school today.

4 CHAIRMAN PERATA: Oh, wonderful.

5 I think we'll take any proponents, opponents
6 first, and then we'll go to the questions from the dais.

7 Anybody here in opposition?

8 Seeing none, anybody in support?

9 Seeing none, we'll just ask if any Members on the
10 dais have a question?

11 SENATOR ASHBURN: Move.

12 CHAIRMAN PERATA: We have a motion.

13 SENATOR PADILLA: Just a couple questions,
14 again, being the new guy around here both to the Committee and
15 to the Senate.

16 So, you articulated the global challenges of
17 dealing with low-level radioactive waste pretty well.

18 What I didn't hear were your specific proposals,
19 initiatives, ideas, recommendations that you want to share with
20 this rule-making body.

21 MR. VADNAIS: Well, sir, as you're probably --

22 SENATOR PADILLA: And I guess both of you could
23 answer.

24 MR. VADNAIS: Sure, and I don't mean to step on
25 things, George, if you'd like to take that one?

26 MR. CAMPBELL: Well, in the specific role, I
27 believe one of the things that we can do, and one of the things
28 I suggested before, was support -- or I would support a bill in

1 which we would ask the universities to do more research in how
2 we could recycle low-level waste, especially this waste that --
3 the B and C waste -- that's going to the Barnwell facility. It's
4 coming out of biomed facilities, utilities, and there just has
5 to be a way to recycle it. It's not yet known, but I think
6 money would be well spent in that -- in that area.

7 I believe that we also need to work with other
8 states that -- to where we're shipping this material to see that
9 we're actually shipping it there properly, that it's arriving
10 properly, that all of our state licensees are indeed following
11 the law, and that when the material arrives at the site, it's
12 properly packaged, and that it's met all of the Department of
13 Transportation regulations.

14 SENATOR PADILLA: Do you have any reason to
15 believe that it's not being properly packaged or transported?

16 MR. CAMPBELL: No, and there's been nothing
17 that's come back to us yet.

18 But one of the things that -- that I would ask
19 and will ask the commission to do is to spend some time looking
20 at the inspection reports from the State of California to ensure
21 that indeed is the case.

22 MR. VADNAIS: Well, if I could take just a moment
23 to maybe sketch the history of how we got into this, because
24 low-level radioactive waste has not been the responsibility of
25 the state historically before 1988.

26 SENATOR PADILLA: Okay. Well, since you're going
27 to start at the beginning, define in laymen's terms, for the
28 people watching at home, Level B and C, Level A, you know,

1 what's the difference; give me some examples.

2 MR. VADNAIS: That -- that is -- it is defined
3 basically by what it isn't, if you will.

4 Now, low-level waste as defined by the Compact
5 Commission -- and understand what I mean by Compact Commission.
6 In 1988, the federal government no longer wanted responsibility
7 for disposing of this material, and so they -- Congress
8 basically allowed these Compact Commissions to be formed so that
9 regionally-generated low-level waste -- and I'll talk about what
10 that is in a second -- could be disposed of in regional places,
11 rather than it being controlled by the federal government. And
12 all of the governors at the time agreed to that, and so compacts
13 were formed around the country. There's how many, George, 11 of
14 them? There's quite a few of them.

15 And we are in a compact with the State of
16 Arizona, and then, through some paradoxical logic I don't
17 understand, the State of North Dakota and South Dakota, which,
18 you know, regionally aren't close to us at all.

19 Now, most of the low-level radioactive waste --
20 and that's waste that, number one, didn't come out of a reactor,
21 is not a by-product of a reactor, or uranium, that sort of
22 thing. Number two, it is not mining or mill tailings, or
23 something like that. Number three, it's nothing the federal
24 government is responsible for. And then, it's not some of these
25 esoteric weapons component materials, like plutonium 241 and
26 cerium 242.

27 So, there's -- legally there's a very specific
28 definition of what is low-level radioactive waste.

1 And the commission has no ability to change that
2 or control it. It's defined by the Nuclear Regulatory
3 Commission, and that's that.

4 Class A is the least radioactive material.
5 You're talking gloves, booties, things radiation workers use,
6 things that are slightly radioactive with a lot of bulk.

7 Class B and C are things that have higher levels
8 of radioactive materials. An example would be the turbine out
9 of a nuclear reactor, say from San Onofre, you know. That would
10 be something that's been activated by its presence near a
11 reactor and it's hot.

12 Now, the Class A materials, which is the bulk of
13 it by far, every year there are about maybe 200 petitions to the
14 commission to dispose of those. And they virtually all go to
15 the Envirocare facility in Utah.

16 Because California -- part of this compact thing
17 was, they wanted the states to have their own disposal sites.
18 And you are probably not aware, but California made a stab of it
19 starting in 1988. And basically, the political will to create a
20 low-level waste disposal site was not there. The Ward Valley
21 site that they tried to build had many, many serious problems.
22 And there is specific legislation that excludes a site from
23 being built there.

24 That same legislation, which we talk about in the
25 written questions, specifies how a site would be built in
26 California, and what some of the minimum requirements would be,
27 and they're good requirements. I mean, they're really looking
28 after the safety and the well being of the people of this

1 state.

2 But the bottom line is, we don't have a facility
3 in California to dispose of that. And in any kind of an horizon
4 that we can see, there's not going to be one. And so, we have
5 to export these materials to one of two places, Utah for the
6 Class A, and the more dangerous stuff, B and C, to North
7 Carolina -- or sorry, South Carolina.

8 Now, that material is no longer going to be
9 accepted after the summer of 2008. And so, the upshot is, it's
10 going to be stored here. And it's going to be stored where it's
11 generated, which would be the basement of a hospital. It could
12 be a power plant accessory building, something like that.

13 SENATOR PADILLA: Again, the question is, any
14 suggestions, proposals, recommendations?

15 MR. VADNAIS: Well, again, that's all we can do
16 is suggest and inform you as to what your alternatives are.

17 But because California is the first host state of
18 this compact, we had agreed to have a low-level radioactive
19 waste facility. And that is something that's in California law;
20 it's in federal law. And we're not doing that.

21 Now, two other states have been sued for a lot of
22 money because of their failure to do that, and California is
23 vulnerable in that case. So, you all need to know that we have
24 that legal vulnerability.

25 Beyond that, there should be planning, or some
26 contingency planning at this point as to what we're going to do
27 with the Class B and C waste. Either store it in the state, or
28 try and reach some kind of agreement with the federal

1 government, who has massive amounts of storage to which we do
2 not have access to of disposal capability, or with some other
3 state that is trying to establish this kind of a disposal
4 facility.

5 SENATOR PADILLA: And until such a facility or
6 even a proposal is determined, as you mentioned in your opening
7 statement, we have temporary storage facilities and transport
8 concerns, not just for the sake of dealing with radioactive
9 waste, but in the post-9/11 environment, issues of terrorist
10 activity that's increasing our threat as a target.

11 MR. VADNAIS: Right.

12 SENATOR PADILLA: Comments about that? Is that
13 being discussed at the board, planning for that?

14 MR. VADNAIS: I gave a talk on that subject when
15 I first came on board a year ago at the April meeting in North
16 Dakota.

17 I have a long association with terrorism and
18 weapons of mass destruction that dates to my time at the CIA
19 Counterterrorism Center where I worked. We were watching that
20 not because there is a high likelihood that terrorists would
21 attempt to appropriate nuclear materials and use them against
22 us, but only because the consequences are so grave.

23 There has been very little reporting that anybody
24 is actually doing that. However, there have been two cases
25 where we know that groups like Al Qaeda have attempted to use
26 nuclear materials in some type of attack. One occurred in the
27 year 2000 in April, on the border of Khazakstan and Uzbekistan.
28 There was a load of scrap steel crossing that border on its way

1 to Islamabad, Pakistan and, it's assumed, to Afghanistan.

2 And as the -- as the truck was moving across the
3 border, two of the border guards were carrying an instrument
4 that I make and sell in my capacity as a small businessman. And
5 those little guys are called radiation pagers. They're a small
6 gadget you wear on your belt, and if you get close to
7 radioactive material, they alarm: they vibrate or they beep.

8 And both of these border guards, who speak no
9 English or anything else, you know, their units started -- start
10 talking to them. And they stopped that truck, and they found
11 quite a number of lead-lined containers that were full of
12 radioactive materials that were being smuggled, essentially.
13 Ultimately it was determined they were headed to the Al Qaeda
14 organization. So, they had the desire to use that.

15 In the initial indictment of Jose Padilla -- and
16 boy, isn't that case a mess, you know --

17 SENATOR PADILLA: No relation, by the way.

18 [Laughter.]

19 SENATOR PADILLA: For the record. I want to make
20 sure the court reporter gets that. Give her a second.

21 [Laughter.]

22 MR. VADNAIS: In that particular case, at least
23 the initial allegations were that he was going to come into the
24 country and effectively steal those materials from the many
25 places that they are available in this country to make a dirty
26 bomb.

27 So, those are the two, you know, hard points we
28 know about. But the vulnerability is certainly there.

1 SENATOR PADILLA: You seem very knowledgeable in
2 the area, so I'm glad it's on the minds of the folks at this
3 commission, discussing this.

4 MR. VADNAIS: If you look at what the
5 responsibility of the commission is, it's not a decision-making
6 body, but we are your eyes and ears. We are watching this
7 issue, and it's our job to keep you, and the Governor, the
8 Legislature, and the people in the state informed of what's
9 going on in this area.

10 I know George is with me. We take that job very
11 seriously.

12 SENATOR PADILLA: Thank you.

13 CHAIRMAN PERATA: Anything further?

14 I appreciate both of you being here today and
15 answering the questions.

16 I don't know if this is factually accurate, but I
17 want to put it out there. And if it is, I'd like to see you do
18 something about it. You don't have to talk about it today, just
19 do something about it tomorrow.

20 That is, that even though it requires a
21 two-thirds vote of the commission to export, that responsibility
22 is effectively delegated to staff.

23 In all due respect to the staff here, given the
24 nature of the conversation we've just had, I would be more
25 confident if there was a little more hands-on objective view of
26 what's going on than that seems to suggest.

27 We're going to meet with the Department of Public
28 Health, which is charged with overseeing the regulation of

1 radioactive waste to talk about some of the issues that you've
2 brought up.

3 In spite of the fact that the commission doesn't
4 have rule-making authority, decision-making authority, et
5 cetera, just the nature of what it is that you are doing belies
6 that. And, you know, we have to have Senate confirmation of
7 that, and you have to appear, which is a different category by
8 itself.

9 So, I want to make sure that, one, we have a good
10 handle on this administratively, and secondly, that we evaluate
11 what the board does.

12 I'm not suggesting you're going to get paid.

13 [Laughter.]

14 CHAIRMAN PERATA: But just to make sure that we
15 are giving it the appropriate due.

16 And I think we're fortunate to have people of
17 your caliber doing this, and I want to thank you for that.

18 With that, we have a motion, do pass to the
19 Senate Floor for confirmation. Call the roll, please.

20 SECRETARY WEBB: Cedillo.

21 SENATOR CEDILLO: Aye.

22 SECRETARY WEBB: Cedillo Aye. Dutton.

23 SENATOR DUTTON: Aye.

24 SECRETARY WEBB: Dutton Aye. Padilla.

25 SENATOR PADILLA: Aye.

26 SECRETARY WEBB: Padilla Aye. Ashburn.

27 SENATOR ASHBURN: Aye.

28 SECRETARY WEBB: Ashburn Aye. Perata.

1 CHAIRMAN PERATA: Aye.

2 SECRETARY WEBB: Perata Aye. Five to zero.

3 CHAIRMAN PERATA: Five-zero, congratulations to
4 both of you.

5 MR. CAMPBELL: Thank you very much.

6 CHAIRMAN PERATA: Our final appointee appearing
7 today is Jeff Danzinger, Member of the California Integrated
8 Solid Waste Management Board, or Integrated Waste Management
9 Board. They changed the title.

10 You may come forward. And the first thing you
11 should do is introduce your family.

12 You didn't rent these kids? They are, like,
13 yours?

14 [Laughter.]

15 MR. DANZINGER: They're all mine, Senator.

16 Yeah, I was all ready planning to introduce them
17 first in a big way.

18 I have my wife, Brenda, whose profession is far
19 more important than my own. She's a middle school math teacher,
20 and a darn good one.

21 CHAIRMAN PERATA: Oh, good.

22 MR. DANZINGER: And two of our kids -- one's
23 hiding. Brooks is not happy with how he looks right now. And
24 our daughter, Marid.

25 I was hoping that our other son, Carthen, our
26 15-year-old, would be here today, but he couldn't find time to
27 fit me into his schedule.

28 [Laughter.]

1 CHAIRMAN PERATA: We know how that goes. Cut him
2 out of the will.

3 MR. DANZINGER: Well, if there was anything in
4 it, Senator, I think I'd have some leverage.

5 [Laughter.]

6 CHAIRMAN PERATA: Please open.

7 MR. DANZINGER: Thank you, Chairman Perata and
8 Committee Members.

9 I can't help myself. After listening to the
10 previous appointees, it's apparent to me that you're hearing
11 from some very smart people today, and obviously I'm here to
12 give you a break from all that.

13 It's an honor to appear before you as an
14 appointee of Governor Schwarzenegger to the Integrated Waste
15 Management Board, and I appreciate the opportunity to present
16 myself today for your consideration.

17 I want to first express how gratifying it's been
18 to return to the board in support of really one of the great
19 environmental crusades that I think California has seen, the
20 Integrated Waste Management Act, or AB 939, which has in almost
21 every respect -- institutionally, economically,
22 environmentally -- changed the way that we look at what we
23 discard.

24 It's been my good fortune to also be able to join
25 in celebrating the achievement of 50 percent statewide
26 diversion, which is a very impressive achievement, and some
27 would probably say improbable as well, considering what the
28 landscape looked like when we started, and the challenge of

1 raising diversion when you have explosive growth in population
2 and our economy, which, of course places a strain on our
3 capacity to limit waste generation.

4 What's perhaps most striking today after 50
5 percent is that, if you take a look at what's still going to the
6 landfills, much of it is readily recoverable, recyclable, and
7 compostable. The same kinds of materials that the 939
8 infrastructure is already designed to divert to better and
9 higher uses.

10 So, in my mind, there's a tremendous amount of
11 progress to be made by expanding, by finding ways to expand what
12 we're already doing. And we should break down barriers to being
13 able to do just that.

14 A big part this is market development, which I
15 feel is a core competency of the board, stimulating markets,
16 promoting the use of recycled materials, recycled products.
17 It's really a backdrop to everything that we do, because a
18 sustainable society is certainly not one in which secondary
19 materials pile up in warehouses, or don't have enough value to
20 be pulled out of the wastestream in the first place and just end
21 up in the landfill.

22 There are also new opportunities now to expand
23 waste diversion while reducing waste and achieving other
24 benefits at the same time. I mean, we see these opportunities,
25 for instance, in AB 32 and the Governor's Bioenergy Working
26 Group.

27 Better waste management plays a role in climate
28 change, plain and simple, because less waste going to the

1 landfill means lower greenhouse gas emissions, particularly
2 methane, which has a far higher -- a far greater warming effect,
3 heat-trapping effect, than carbon dioxide.

4 The first task associated with AB 32 that's been
5 achieved so far as I know is 50 percent diversion, one of the
6 board's three tasks under 32.

7 And as we continue to elevate our gain with
8 higher recycling rates and the promise of bioenergy, we can
9 contribute even more to alleviating the climate crisis while
10 reducing waste and our dependency on fossil fuels.

11 I also hope that we can explore more solutions
12 that are closer to the point of waste generation, in particular,
13 some degree of producer responsibility. We should take more
14 aggressive steps to prevent the creation of waste, which is,
15 after all, the top tier of the 939 hierarchy. That includes,
16 for example, one thing that we're trying to lot of focus on,
17 it's getting more recycled content and more common sense into
18 consumer packaging, which is a real problem and a real issue.
19 And ultimately, changing the way products are designed, because
20 we know that most of the waste potential and environmental
21 impact in a product is found in its design.

22 One last thought before I close, is that while we
23 are probably best known for our role in increasing waste
24 diversion, our first duty, our highest priority, is no different
25 from any environmental agency, and that is protecting our
26 environment and our people. I support a vigorous program to
27 safeguard the public health and safety. We have an enforcement
28 mandate at the board that's no less important than anything else

1 we do.

2 So, as we now move beyond to the next 50 percent,
3 we have many challenges and even more opportunities before us.
4 We've proven we can build success, and I think most
5 significantly, we have made waste management a distinctive and
6 credible part of California's environmental legacy.

7 I look forward to working with the Legislature
8 and the local governments, and everyone, to build on the
9 progress and the partnerships, and continue the good work of the
10 board.

11 Thanks very much, and I'm happy to answer, or at
12 least struggle, with any questions that you may have.

13 CHAIRMAN PERATA: Thank you. You don't sound
14 like a dummy.

15 [Laughter.]

16 CHAIRMAN PERATA: Alex, you had some questions?

17 SENATOR PADILLA: Yes, actually a number of
18 questions, some of which we began to discuss yesterday in my
19 office.

20 In front of your kids, you look a little better
21 than calling yourself a dummy. Come on.

22 MR. DANZINGER: I'm not a scientist, that's for
23 sure.

24 [Laughter.]

25 SENATOR PADILLA: No, but for someone who spent
26 nine years advising this body, you know more than a little bit
27 about this, and you've been on for nearly a year, so you have
28 some experience with which you approach these questions.

1 The first thing I wanted to share both with you
2 and my colleagues here on the Committee is the personal
3 experience with which I come at these issues, because I grew up
4 in one of those communities that was a victim, if you will, of
5 some of the negative impacts of landfills, growing up not too
6 far from the Lopez Canyon landfill in the northeast end of the
7 San Fernando Valley, and having seen those trucks barreling
8 through the community with not just the rubbish to leave behind,
9 but the ongoing environmental concerns about landfills.

10 So, I want to be just with asking where we are
11 on the enforcement end of the roles of this body?

12 I know this board and the local enforcement
13 agencies that come along, but in preparation for today I came
14 across a 2005 EPA Performance Report that basically points out
15 much to be desired in terms of the enforcement performance of
16 this board.

17 So, I wanted to ask, what's been done since then
18 to address the concerns raised in that report?

19 MR. DANZINGER: I'm not intimately familiar,
20 Senator, with the findings of the '05 study. I mean, I have
21 preexisting concerns and issues with enforcement anyway.

22 I think that -- well, first of all, if you look
23 at -- and I don't want this taken wrong. I mean, if you take a
24 look at enforcement, if you take a look at compliance across the
25 board, if you look at the inspection reports that are out there
26 at any given point in time, you'll see anywhere around two to
27 three percent of operations that are out of compliance. And
28 that could be in varying degrees of noncompliance.

1 Now, that's three percent more than we'd like
2 because -- because of what's at stake. When a facility that
3 handles waste is out of compliance, that can be a very serious
4 issue and can pose a very serious threat.

5 But compliance over all is very high, and it's
6 certainly a lot better now than it was years ago.

7 SENATOR PADILLA: I guess, not to interrupt, but
8 I approve what you just said, while the percentage of compliance
9 may be high, the consequences of noncompliance are devastating.

10 MR. DANZINGER: Absolutely.

11 SENATOR PADILLA: The report I was referring to,
12 for starters, points out that the Resource Board, for example,
13 in recent years has levied more than \$11 million in penalties
14 for people out of compliance. The Water Board, another example
15 in the same timeframe had levied \$3.7 million in penalties.
16 Toxics, \$2.3 million.

17 In the same time period, the Waste Management
18 Board had levied \$73,000 in administrative penalties.

19 So, it just seems very disproportionate for a
20 body of equal significance when it comes to environmental
21 protection.

22 MR. DANZINGER: Right.

23 I can't speak to how the Air and the Water Board
24 approaches theirs. I mean, I can't sit here and say, 73,000 is
25 not enough, or it's too much, or there's something that's been
26 missed.

27 I think, you know, the board has a working
28 partnership with local enforcement agencies. And our approach

1 is certainly preventive. I mean, we and our staff are heavily
2 engaged at the local level to work with those folks to bring
3 facilities into compliance, to enforce to the strongest degree.

4 And I would agree with you, that there are cases
5 in which that's not the case.

6 But what we certainly aim for is that if a
7 facility permit, for instance, is going to reach the board, it
8 has engaged a very lengthy process through the local process of
9 CEQA, and the IRs, and all of that. And we have visibility of
10 that to the extent that our staff is involved with the LEA and
11 with those locals to make sure that they get everything squared
12 away.

13 If facilities are out of compliance, and it is
14 for us to step in, we will step in. I think one of the big
15 problems, and I've outlined this in my Q and A, is that I think
16 that the board -- the fundamental problem is that the board
17 lacks statutory authority to do certain things that -- that we
18 would like to be able to do.

19 I mean, if a permit comes to us and we deem it to
20 be incomplete, we can't deny it because it's incomplete.
21 Because the way that the law is written now is, the LEA has the
22 authority to determine if it's complete, and that's it.

23 We also have limited authority to act as the
24 enforcement agent to take that direct enforcement action when
25 we're not already acting as the EA. We are the EA in a handful
26 of jurisdictions, and it's debatable whether we should be at
27 others; I don't know. But I think, you know, we are the EA in
28 certain jurisdictions, and we do take direct enforcement action

1 in those cases.

2 If a permit comes to me and I'm not comfortable
3 with it, I make that known. I've made that known this year.
4 But as we discussed before, there is a very defined universe of
5 issues that we are to take into account, that we are required by
6 statute to take into account. That is state minimum standards,
7 ensuring that CEQA has been carried forth, and that is what
8 concurrence and nonconcurrence is based on.

9 So, I think that there are certainly enough vivid
10 anecdotes out there of individual facilities that raise concern.
11 I agree.

12 SENATOR PADILLA: We'll talk about the one you
13 made reference to, you had issues with before you made your
14 concerns known. In what way did you make them known?

15 MR. DANZINGER: You're talking about the Sun
16 Valley facility.

17 SENATOR PADILLA: You said there was an item
18 before the board this year and you made your concerns
19 known.

20 MR. DANZINGER: Yes. Well, there were a number.
21 I mean, I -- I mean, yes, I've raised concerns about a few.

22 One in particular, I did not feel it was ready.
23 You know, you can look at the history --

24 SENATOR PADILLA: How did you make your concerns
25 known, is what I'm asking?

26 MR. DANZINGER: I made it known in the Permits
27 Committee meeting that --

28 SENATOR PADILLA: Through comments, through your

1 votes?

2 MR. DANZINGER: Well, through -- yeah, I mean,
3 I've abstained on a couple that there was no statutory or
4 permitting basis for a vote of nonconcurrence because they had
5 met state minimum standards, but there are other peripheral
6 issues that caused me concern. And I made them aware of that.

7 You know, some people think abstain is a cop-out
8 vote. I think abstain is a cop-out vote if it's not accompanied
9 by a strong statement. If I have no legal or permitting basis
10 to find nonconcurrence, then I won't flout the law. But if I
11 feel deeply concerned about it, I will accompany a vote of
12 abstain with a very strong statement.

13 The one facility that you are talking about that
14 we're referring to has not come back because the statement was
15 made very loud and clear.

16 SENATOR PADILLA: The issue about your abstention
17 raises a concern, or at least it's something that looks odd to
18 me.

19 This is the only board that I'm aware of where a
20 50 percent plus one vote grants the application or grants an
21 approval. It just seems undemocratic to me.

22 Has the structure or that element of the board's
23 structure been discussed? Would you suggest or recommend
24 changing that?

25 MR. DANZINGER: I'm not aware of any discussions
26 that have been taken place on that. And I'm not -- frankly, I'm
27 not familiar, I'm not aware of what went into the negotiations
28 that developed the construct that we currently operate under.

1 That goes back about, I imagine, 15-16 years.

2 SENATOR PADILLA: But again, you were a long-
3 time staff member advising this board, and now you're a member
4 of the board, so you're not unaware of this dynamic.

5 MR. DANZINGER: No. I mean, we're all very aware
6 of it, absolutely.

7 SENATOR PADILLA: Do you have an opinion on it?

8 MR. DANZINGER: No, I don't think I have an
9 opinion on it. I don't -- I don't know that it's my place to
10 second-guess or doubt the Legislature and the administration on
11 the establishment of that construct. I will grant you that it
12 is unusual.

13 SENATOR PADILLA: But you talk in your materials
14 about the need or at least reason for giving the board further
15 authority, or further scope and jurisdiction.

16 MR. DANZINGER: Right.

17 SENATOR PADILLA: So in the same breath, if
18 you're sort of revisiting how this board was created and how it
19 maybe could function better, in your opinion, I would imagine
20 the structure and the governance of the board fits under the
21 same logic.

22 MR. DANZINGER: Yeah. I mean, but I just -- I
23 don't see that as part of the menu of things that I've laid out,
24 you know, that would increase our statutory authority under the
25 current construct, so that we can be more assertive in
26 intervening and taking direct enforcement action. I think
27 that's probably where my interests lie in terms of being more
28 assertive from an enforcement posture.

1 SENATOR PADILLA: Colleagues, I just wanted to go
2 on the record during this hearing that the board, when
3 considering applications, has 60 days to act. If it doesn't
4 actively deny the application, they are deemed approved. And
5 then given the fact that the board has six members, a 3-3 vote
6 means that it's approved.

7 MR. DANZINGER: It will be deemed concurred in.

8 SENATOR PADILLA: Which, again, doesn't seem
9 democratic in my sense. Regardless of whether we're talking
10 about making that even number into an odd number, the dynamic of
11 an abstention, allowing that, are making it likely for tie votes
12 of 3-3, which again are deeming approval of an application.
13 Just seems very odd to me.

14 Coming back to the core mission of the board, the
15 reduction of waste, reuse of materials, and recycling,
16 California should be lauded for having reached the 50 percent
17 goal.

18 I'm wondering when we can elevate that to a 60
19 percent mandate, or even higher? Any comments on that? Or is
20 the board actually considering recommending such changes in
21 policy?

22 MR. DANZINGER: Well, sure. I mean, you know,
23 the focus has been largely on the 50 percent statewide
24 achievement.

25 SENATOR PADILLA: Which has been met.

26 MR. DANZINGER: Which has been met. I
27 mean, we're at 52 percent as of '05, so it may actually be
28 higher now, but the numbers lag, and all that.

1 The fact is, the 939 requirements, the mandate of
2 25 and then 50 percent, the mandates are actually applicable to
3 the individual jurisdictions. So, we still have work remaining
4 in terms of working with those individual jurisdictions that
5 have not reached 50 percent, that are moving along.

6 And so, there's still a lot of potential there.

7 SENATOR PADILLA: About what percentage of local
8 jurisdictions would that be?

9 MR. DANZINGER: Well, the vast majority are in
10 compliance with 939.

11 SENATOR PADILLA: Roughly 60 percent in
12 compliance?

13 MR. DANZINGER: Yeah, about 60, 65 percent are in
14 compliance. And then of the remaining, some receive time
15 extensions which were allowed by legislation. We have a handful
16 that are on compliance orders. And of those, some of them are
17 looking promising. We just -- we just had three of those
18 jurisdictions that came before us this week, in fact, all three
19 of which are making excellent progress.

20 And of course the focus, the number is an
21 indicator, but of course I would argue that 939 is much more
22 about the programs, the initiatives, and the changes behind
23 those numbers.

24 So, what we're focusing on with a lot of these
25 jurisdictions is based upon what kind of waste stream you have,
26 what are the types of diversion programs that make sense for
27 you, because you've got precious resources to allocate for this,
28 so let's put them where you can get the bang for the buck. And

1 that's where we are on some of those jurisdictions. They're
2 getting -- they've got those programs in place and they're
3 moving forward.

4 So, we stay focused on that, and that's part of
5 the routine work of the board, is working with those
6 jurisdictions, and moving them forward through a combination of
7 the technical assistance and the market development, helping
8 them identify, you know, that.

9 Of some of the jurisdictions -- some of the
10 jurisdictions that reached 60 -- I mean 50 percent, a handful of
11 them have voluntarily established higher rates. So we know it
12 can be done, I mean, it's been done.

13 You've had this upward trend of diversion in
14 jurisdictions where you've had population and economic growth,
15 which again, as I mentioned earlier, that poses a challenge.

16 As far as beyond, I mean, I think that that -- we
17 certainly should be thinking about the next 50 percent in every
18 way possible. I think that we're going to be able to move along
19 that way simply by expanding on what we're doing.

20 As far as a requirement, are we going to
21 establish a new goal, I think that's something that should be
22 discussed. It should be discussed in a collaborative
23 environment. I think, you know, based upon the precedent of the
24 initial goals being established in statute, any further --

25 SENATOR PADILLA: And being met.

26 MR. DANZINGER: -- should probably be the product
27 of legislation.

28 SENATOR PADILLA: And being met and exceeded by

1 many jurisdictions.

2 MR. DANZINGER: Absolutely.

3 SENATOR PADILLA: In your opening statement, you
4 said one of your observations, if not frustrations, is that
5 there still remains a lot of recyclable, reusable materials.

6 MR. DANZINGER: Right, absolutely. And focusing,
7 focusing on those priority materials, you know, the stuff like
8 the organics, which is like a third of the waste stream, C&D,
9 construction-demolition waste, which is -- which skyrocketed.

10 I can't remember where it was in terms of its
11 component of the waste stream like 10 years ago, but it's risen
12 to the second largest component of our waste stream as a result
13 of the building boom. And it's going to become more with the
14 infrastructure bonds, and that's a great opportunity, too, to
15 build that in.

16 SENATOR PADILLA: There's sort of a two-fold
17 focus here, I guess, of the board on the local authorities or
18 jurisdictions that haven't met their 50 percent requirement, we
19 need to continue to work both carrots and sticks to get them
20 there.

21 But for those who have met or exceeded the 50
22 percent, unless you can articulate a reason why we shouldn't
23 seriously revisit, legislatively or otherwise, upping the
24 mandate from 50 to 55 or 60, or some higher number --

25 MR. DANZINGER: Well, I'm certainly not prepared
26 to give you an argument against raising it. I mean --

27 SENATOR PADILLA: You are?

28 MR. DANZINGER: I'm not prepared to give you any

1 argument against raising it. I mean, I just -- it's a matter of
2 the process under which, you know, that can take place.

3 SENATOR PADILLA: And from what I'm hearing, the
4 board hasn't been discussing even making a recommendation or a
5 request of the Legislature and the Governor's Office to consider
6 that?

7 MR. DANZINGER: I'm not aware of a formal request
8 we've made, let's raise, you know, the mandated diversion rate
9 to a certain amount.

10 What we're focusing on now in that regard, and we
11 think it would be part and parcel to something like that, is
12 changing how we determine compliance and how we measure
13 compliance.

14 SENATOR PADILLA: Let's get into that for a
15 second. Again, in the materials that you submitted to the
16 Committee you talked about an interest or desire to improve the
17 timeliness and accuracy of our data.

18 I wasn't sure what you meant by that.

19 MR. DANZINGER: Well, right now, you know, right
20 now diversion is the goal, and diversion is the means of
21 calculating the goal. And diversion is -- can sometimes be a
22 difficult thing to measure.

23 SENATOR PADILLA: Let me tell you why I asked the
24 question.

25 MR. DANZINGER: Sure.

26 SENATOR PADILLA: In one statement you're saying,
27 we need to improve upon the accuracy and the timeliness of the
28 numbers.

1 In another statement you're saying, hey, pat
2 ourselves on the back. We're at 52 percent statewide.

3 But should we be celebrating if we're not sure
4 the numbers are accurate?

5 MR. DANZINGER: Well, I mean, I think -- the fact
6 remains we have come a long way since this started. And as I
7 said, it's less about the number than about the programs, the
8 changes, the initiatives that have taken place.

9 And when you look across the board, and you know,
10 and I say, look, if you want to see the impact of 939, just
11 think about what California would look like today without it.
12 Okay. I mean, the regional landfill capacity crisis that we
13 were desperate to avert when 939 was passed would have exploded
14 across the California landscape. Scores of new markets would
15 never have been created, some never discovered. Partnerships
16 would never have been formed such as they are. Countless tons
17 of source material would have been needlessly wasted, intensely
18 expanding our reliance on raw materials and our impact on the
19 surrounding environment.

20 So, I guess to those who say, you know, what
21 about the numbers? The schematic that we had, the construct
22 that we had, that measured it from Point A to Point B, tells us
23 that we went from a decade of the '80s in which recovery was
24 somewhere between 7 and 10 percent, which is pathetic, to over
25 50 percent.

26 And I tend to look at a move towards a system,
27 and perhaps that system is using disposal as the indicator,
28 diversion and implementation of diversion programs still being

1 the article of compliance, as an improvement without necessarily
2 being an indictment of the system that we had.

3 SENATOR PADILLA: Going back to the statement I
4 read in your materials, what thoughts or suggestions do you have
5 on improving the accuracy and the timeliness of the data?

6 MR. DANZINGER: We're engaged in a process now,
7 as required by legislation, to try to -- or to develop some
8 ideas that can be considered for legislation. And we're in the
9 process of doing that now. That is a schematic that we're
10 working out now.

11 And again, certainly, as I mentioned, one option
12 is to move to a system where you measure -- it's a bottom-line
13 system of measuring disposal as an indicator of the progress and
14 of moving. You know, diversion and disposal, they go
15 hand-in-hand. If you're raising disposal, then you're doing
16 diversion. But it's just -- it's more bottom-line.

17 And the numbers, the data that you rely on to
18 measure that is more timely than measuring diversion, which
19 relies on certain data like, I don't know, taxable -- you know,
20 it's stuff like from BOE or something that lags by a year. I
21 mean, that's why we're talking right now about 52 percent as of
22 '05.

23 SENATOR PADILLA: One of the tools or strategies
24 you utilize is the markets that are created for recyclable
25 materials. You claim more can be done and we can do better.

26 Again, thoughts? Specific initiatives you may be
27 working on?

28 MR. DANZINGER: Sure. Yeah, I mean, the markets

1 is really exciting stuff, because there's a lot of potential.
2 And I mean, I guess it's evidence of the potential that still
3 remains on markets is that, you know, generally a few years into
4 a program, you've exhausted all the low-hanging fruit. But, you
5 know, if you look at the incredible impact that I think that we
6 can have by expanding our state agency efforts, the state using
7 its leverage, its buying power, to jump-start markets, and
8 hopefully in a way that those markets can be sustainable
9 eventually, that's going to be really important.

10 I mean, we're working with Caltrans, and have
11 been working with Caltrans and made a lot of progress on
12 developing the specifications and getting them fully around
13 that, you know, on the use of compost and mulch for some 45,000
14 lane miles of freeway. Working with the Department of General
15 Services on environmentally preferable purchasing, building
16 environmental considerations into billions of dollars in state
17 contracts.

18 We still have a lot of potential left in that,
19 but I would call that the low-hanging fruit of market
20 development. And that stuff -- and you know, when you build that
21 kind of stuff into master contracts, as you know from your local
22 experience, that's something that local governments can
23 piggyback on, they can buy off, they can build into their own
24 contracts, and they can stimulate markets regionally, which is
25 most important because the markets change by region, that pushes
26 it along even more.

27 SENATOR PADILLA: And how does the state do, by
28 the way? Are we using recycled paper and materials at every

1 opportunity?

2 MR. DANZINGER: The state's doing pretty good. I
3 mean, the state agency Buy-Recycle campaign which -- I can't
4 remember the bill number -- it's somewhere like 90-95 percent
5 compliance in terms of agency by agency.

6 SENATOR PADILLA: What's the responsibility or
7 opportunities for manufacturers to help in this regard in terms
8 of materials used or mass of materials used?

9 MR. DANZINGER: Well, there's a step process on
10 that. I mean, I think that wisely there would be a sequencing
11 of that. I mean, you -- some people interchange product
12 stewardship and producer responsibility.

13 I tend to think of product stewardship as more
14 like looking at the life cycle cost of a product and spreading
15 the cost of that across the board, so that unlike some programs,
16 you know, bearing that end-of-life management cost does not fall
17 on one particular party. So, I think that that's really
18 important.

19 SENATOR PADILLA: Going back to your opening
20 statement, you mentioned bioenergy.

21 What role does board have in promoting or
22 furthering conversion technologies?

23 MR. DANZINGER: You're the only one who's ever
24 had to ask that phrase a second time to be repeated.

25 Well, I mean, you know, the technology, some of
26 these technologies are not new. Using MSW as a feed stock for
27 some of these technologies is.

28 So, I think that -- look, if you -- you know, I

1 had -- I think I wrote in my Q and A that I don't see myself as
2 an individual board member as either an obstruction or an
3 advocate for it.

4 I think that we're at an early stage on some of
5 these, such that science needs to take charge of this.
6 Technology generally is given an opportunity to prove itself.
7 It has to prove itself.

8 If you show me a technology that has the
9 potential to divert a substantial amount of waste from
10 landfills, because that's -- that's what I care about. That's
11 all I care about. I mean, that's it. It has to begin with
12 that -- and can bring together the nexus, for instance, of waste
13 reduction, pollution prevention, and clean energy production,
14 and can do it in a way that exceeds environmental safeguards and
15 standards, then I would say that that is something worth
16 exploring. I would say that it should be explored, and we
17 should make an effort to determine its true performance
18 characteristics.

19 So, that's where I am on that. I think that
20 there's some clarity that would likely need to be done in
21 statute on definitions, and what is what, and who has what role.

22 SENATOR PADILLA: But we haven't seen a
23 technology that's quite there yet?

24 MR. DANZINGER: I don't know. It depends on what
25 you put under conversion technology. Frankly, I don't know what
26 that means.

27 But, you know, I look at like anaerobic
28 digestion, which is enclosed, low temperature, biological

1 process. Heck, you can call that composting. You can call it
2 composting. It's great. I think it might be politically
3 palatable, and you might have as much as 20-25 percent of what's
4 currently going to landfills that you can put through that
5 process. Let's get those all over the place, because I think
6 that those are generally proven.

7 I think that processes to prove the veracity of
8 cellulosic ethanol, that should be explored as well.

9 But -- so, it depends on, you know -- it's got to
10 be taken on a case-by-case basis, I think. And I think there's
11 certainly enough proponents out there of these types of
12 operations that if they're going to be proven, they're going to
13 be proven.

14 SENATOR PADILLA: Mr. Chair, colleagues, just
15 thank you for allowing me to take up so much time. I am, as I
16 mentioned before, a new Member to this Committee and to the
17 Senate, but not a new member to public office.

18 In my seven-and-a-half years on the Los Angeles
19 City Council, we certainly grappled with these issues because of
20 the volume that Los Angeles represents to this statewide
21 challenge. And coming from a community, representing a district
22 where we have more than our fair share of landfills, and their
23 impacts and consequences, actually my district is second only to
24 Senator Calderon's district in the number and volume of
25 landfills in the entire state.

26 I think California does have a lot to be proud of
27 in terms of pushing the envelope when it comes to environmental
28 protections and regulatory programs, but I am disappointed to

1 hear that we have a full-time state board like this one that has
2 the ability to approve landfills without majority votes. I
3 think it's undemocratic and worthy of further discussion.

4 I'm also concerned that the board doesn't seem to
5 use its authority as well as it could, and that there's plenty
6 of room for additional enforcement authority as well.

7 So, I want to continue to work with you on
8 advancing our recycling programs and our waste reduction
9 programs, and with the rest of the board, including pursuing
10 legislation this year. There's a ready opportunity.

11 Thank you, Mr. Chair.

12 CHAIRMAN PERATA: Thank you.

13 Any further questions?

14 I appreciate the concerns that Senator Padilla
15 has raised. And since he has a large number of landfill sites
16 in his district, he probably has the motivation or interest to
17 continue this.

18 The time is past due that we looked at the act,
19 and what we've done, and what else we should do. I think you
20 make some very good points about that.

21 We've been a little befuddled, or at least I've
22 been a little befuddled by all this razzle-dazzle conversion
23 technology stuff. You said some things that I understood that
24 were very simple. You know, it's like you take this and you
25 put it over there. And not having the statutory authority to
26 spank somebody, and that may be because they knew the kind of
27 people we're going to appoint, I don't mean yourself.

28 [Laughter.]

1 CHAIRMAN PERATA: There have been some criticisms
2 over the years of some of the political appointees. You know,
3 they didn't want to give them any sharp knives.

4 But what I would like to do is to promise you
5 that we're going to pursue this and would like to have your
6 involvement and engagement. I think together -- and we usually
7 know everything that there is to know about everything here, but
8 occasionally something falls through the cracks -- so working in
9 concert would you and other members of the board -- Wes Chesbro
10 is back on the board now, and Wesley has had a great deal of
11 experience there and success.

12 I'd like to see us toughen up the law, and have
13 us put greater emphasis on the things like both recycling and
14 markets. And you've touched on some things here that I think
15 are very important. So, we're going to do that.

16 And I won't even ask for your commitment. I took
17 that as implied in everything you said.

18 So, with that, I will entertain a motion.

19 Oh, are there any witnesses that want to speak
20 against him?

21 [Laughter.]

22 CHAIRMAN PERATA: Here we are. We've got Josh
23 Pane wearing a tie for the first time since I've known him. I
24 almost ought to let you come up here right now, but I'm not
25 going to. We'll stipulate that saw a couple people wave.

26 SENATOR ASHBURN: Motion.

27 CHAIRMAN PERATA: With that motion to confirm,
28 please call the roll.

1 SECRETARY WEBB: Cedillo.

2 SENATOR CEDILLO: Aye.

3 SECRETARY WEBB: Cedillo Aye. Dutton.

4 SENATOR DUTTON: Aye.

5 SECRETARY WEBB: Dutton Aye. Padilla.

6 SENATOR PADILLA: Aye.

7 SECRETARY WEBB: Padilla Aye. Ashburn.

8 SENATOR ASHBURN: Aye.

9 SECRETARY WEBB: Ashburn Aye. Perata.

10 CHAIRMAN PERATA: Aye.

11 SECRETARY WEBB: Perata Aye. Five to zero.

12 CHAIRMAN PERATA: If you need me to sign
13 something for your client that you were here, I'll do that.

14 MR. DANZINGER: Thank you, Mr. Chairman. I
15 appreciate it.

16 CHAIRMAN PERATA: The final matter of importance
17 that's on our agenda today, we had last week Rachelle Chong
18 here, and we had quite a vigorous discussion.

19 I probably erred in not asking her to come back,
20 and not having her come back, because there were subsequent to
21 that time answers to some questions that Members asked that
22 probably it would have been more appropriate for her to answer
23 for herself in front of the Committee.

24 However, I didn't do that. And so, what I want
25 to do today is to enter into the record two letters of concern
26 that have been raised specifically about topics that were
27 discussed and actions that she has taken at the PUC.

28 In the newly found spirit of post-partisanship,

1 which I now -- I never understood 'post-modernism,' and now I have
2 to deal with post-partisanship, but I will. I'll struggle with
3 it -- I am going to vote for Ms. Chong.

4 But I have to say that I do have these concerns,
5 and I do intend and will take them up with her personally
6 because I want to get her assurance about two things.

7 She expires. We don't have time to continue
8 this, and I personally don't see that there's a reason not to
9 send her to the Senate Floor.

10 First, there is some trouble that she was not
11 forthcoming with her role in the case involving AT&T. She told
12 a number of Members that when she learned the AT&T had been
13 relieved of regulatory sanctions, she fixed the problem.

14 As it turns out, we found out subsequently that
15 was not the case.

16 Then she had told me that she restored the heart
17 of the original language, but that, too, does not seem to have
18 been the case.

19 And then, before this Committee last week, it had
20 been sort of reduced to, "I misspoke."

21 So, that's simply on a matter that's that
22 important. And frankly, when you have even a member, a
23 colleague who is leaving the commission and doesn't have much
24 risk in saying what he says, I do think that this is something
25 that deserves and needs to be clarified. There have been
26 different people who have heard different things said on that
27 subject.

28 So, I'm going to just ask her; hold her to what

1 she said was now inadvertent, and I would consider that
2 misspeaking is inadvertency, that she act now, not later, to
3 rectify that problem.

4 Secondly, there was the issue raised specifically
5 by Senator Padilla about the video franchising issue.

6 There's a lot of blue sky surrounding what we're
7 doing here, but it's important, and we've talked to her about
8 this, it's important that individuals who are working in this
9 area -- and a lot of time I know in the Senate, with Senators
10 Escutia and Murray specifically, or particularly, but I believe,
11 Alex, you had testified at that hearing, at one of those
12 hearings as well -- they were concerned justifiably about how
13 the act and the PUC will treat low-income communities, and we
14 share that. We want to make sure that -- not that she
15 wouldn't -- but want to underscore that there are some concerns,
16 and we want that registered.

17 And finally, she has given us her commitment, and
18 I will restate this for the record, that the direction given to
19 Mr. Peevey, whose province apparently includes foreign language,
20 that the contracts will be provided in the same language of the
21 subscriber. She seems to be more than willing and has said.
22 And I know that there are jurisdictions at the PUC, little
23 fiefdoms, and this is Mr. Peevey's. He has affirmed that he
24 will do this, and as early as June. So, we're looking forward
25 to that happening.

26 So with that, I will ask to have this nomination
27 go to the Floor without any recommendation from this Committee
28 to underscore the seriousness of these concerns.

1 But as I said, I intend to vote for her tomorrow
2 when I bring her before the entire Senate, and my other
3 colleagues will evaluate and weigh their decisions accordingly
4 the same as, I'm sure, everybody else here.

5 If there's anything further? Yes, Gil.

6 SENATOR CEDILLO: I have a question, but before
7 that, I appreciate particularly the efforts around conforming
8 language to contracts.

9 And it's just patently unfair to market to people
10 in one language and then give them other contracts. It's a
11 shell game, and we should not tolerate it one day longer.

12 And so, I have do have some concern on how long
13 this takes, and whether people will be held harmless if they
14 were engaging contracts from today to June, if they're victims
15 of that.

16 So, we should be sensitive to that and give a
17 direction to the PUC about that, because it really is nothing
18 more than an institutional shell game to do otherwise.

19 I'm not clear on the first point that you raised?
20 I had concerns about her failure to answer some particular
21 questions that I asked, and I'm not quite sure. What was the
22 recommendation to her?

23 CHAIRMAN PERATA: What I'm going to do is, I am
24 going to take her through the series of statements that she made
25 to different individuals at different times that were different,
26 and ask her if in fact this was an inadvertency, which is what
27 she has said it was, that she correct it.

28 You know, she said originally she said that they

1 had fixed the problem. They hadn't fixed the problem. She said
2 she intended to have it fixed. So now it's just a matter of
3 going back and revisiting it and fixing it.

4 SENATOR CEDILLO: And this is related to the
5 matters of --

6 CHAIRMAN PERATA: The AT&T.

7 SENATOR CEDILLO: Then I think that we should be
8 clear, as you are, on the focus of the inquiry -- her, her
9 responsibilities, her conduct -- as distinct from there's
10 almost -- I'm almost inclined to suggest a "hold harmless" in
11 all of this.

12 AT&T is there waiting, obviously, opposing fines,
13 opposing objections with their point of view on this. Eight
14 years pass. They're told by the authority, "Things are all
15 good," and now they're told, "Well, they're not good."

16 CHAIRMAN PERATA: I think this really goes to the
17 heart of just what was intended and what happened.

18 And I agree with you. I think that Ms. Chong's
19 the one that has to be responsive to this, and someone else
20 ought not to be paying a penalty for what she did.

21 SENATOR CEDILLO: Right, because in the few
22 instances where we have not confirmed people, or where I have
23 not voted for confirmation, it has been a discussion not to the
24 views, or philosophies, or ideologies of the appointees, but
25 whether or not they understand the law, whether they understand
26 their duty, and whether or not we have confidence in their
27 integrity, and whether or not they understand their duties to
28 comply with both the spirit and the letter of the laws, and the

1 rules, and the regulations; what their duties are.

2 It's been less clear in this instance, and so I
3 appreciate the manner in which we're going to go forward.

4 CHAIRMAN PERATA: Thank you.

5 SENATOR PADILLA: Mr. Chair, just two comments
6 for the record since the nominee isn't here today.

7 On the policy side of things, first, to emphasize
8 one of the areas of questioning you had last week about consumer
9 protection and advocacy, I just want to state that I'm concerned
10 about the initial steps from the commission, the implementation
11 of 2987 that the nominee's office was authoring, that could
12 possibly undermine the public's ability to protest potential
13 discriminatory practices in the future.

14 So, this is an area that I'll continue to monitor
15 and either work with the commission on or seek legislative
16 remedies if necessary as this goes forward.

17 And the second comment and observation is, I
18 forget the exact question, but in one of her responses last week
19 she summed it up as, well, the Bill of Rights was too regulatory
20 of an approach.

21 And my understanding is that this commission is
22 the regulatory body for the industries over which it has
23 jurisdiction. So, I think there becomes a true philosophical
24 question in terms of the understanding of the mission of the
25 body and the responsibilities of the commissioners.

26 I look forward to tomorrow.

27 CHAIRMAN PERATA: Well, in sum, Ms. Chong's
28 record, her qualifications and her period of service certainly

stand for themselves and, I think, largely weigh in her favor in my mind.

So, what I wanted to do was to just make very clear that we do have these concerns, and that time has expired, and we're putting confidence in her. I mean, she no longer is representing the appointing authority. She's now representing the people of the state. She has a very responsible job, and I will just talk to her.

I meant to speak to her, but I was so excited about going over and hearing the budget presentation by the Governor that I dallied. So, I had intended to do this beforehand so I could give you her assurances personally, but I am sure she is a woman of her word, and enough said.

So with that, we have two other items. And this matter is up tomorrow on the Floor because I believe she expires.

The motion is to the Floor without a recommendation.

SECRETARY WEBB: Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Dutton.

SENATOR DUTTON: Aye.

SECRETARY WEBB: Dutton Aye. Padilla.

SENATOR PADILLA: Aye.

SECRETARY WEBB: Padilla Aye. Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Perata.

CHAIRMAN PERATA: Aye.

1 SECRETARY WEBB: Perata Aye. Five to zero.

2 CHAIRMAN PERATA: Five-zero, so ordered.

3 [Thereupon this portion of the
4 Senate Rules Committee hearing
5 was terminated at approximately
6 4:15 P.M.]

7 --ooOoo--
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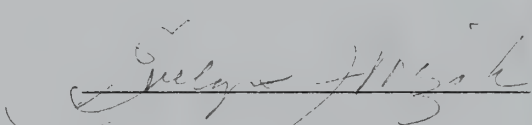
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of January, 2007.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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George W Campbell
PO Box 155
Manchester CA 95459

December 15, 2006

Nettie Sabelhaus
Rules Committee Appointments Director
Room 420
State Capitol
Sacramento CA 95814

Senate Rules Committee

Re: Chairman Perata's letter dated 12/07/06

DEC 20 2006

Appointments

Dear Ms. Sabelhaus:

The following is my response to the questions asked by Chairman Don Perata in his letter to me dated December 7, 2006, in preparation for the Senate Rules Committee's confirmation hearing on my appointment as a member of the Southwestern Low-Level Radioactive Waste Commission.

1. What do you hope to accomplish during your tenure as a member of the Southwest Low-Level Radioactive Waste Compact Commission? What specific goals do you have for the commission and how will you accomplish them?

Response:

During my tenure as a member of the Southwest Low-Level Radioactive Waste Commission representing California, I expect to help the Commission meet its authorities as required by Public Law 100-712. It is important to see that low level radioactive waste is transported out of this state in a safe manner and that will be my major goal while I am a member of the Commission. In addition, I believe that the Commission must ensure that waste is safely managed and therefore I will push the Commission to work closely with the State regulators

by reviewing summaries of their low-level radioactive waste facility inspection reports. In the event that a State licensee does not meet state requirements to safely manage their low-level radioactive waste, the Commission should not allow that licensee to export low-level radioactive waste.

The Commission must also plan for contingencies such as new training needs or new state requirements. I will work with the Commission members to develop such a planning process.

2. In 2002 the Legislature passed and the governor signed AB 2214 (Keeley Chapter 513/Statutes of 2002), which prohibits the Department of Health Services (DHS) from issuing a license for a low-level radioactive waste (LLRW) disposal site in California unless the department determines that the siting, design, and closure of the facility meet federal regulations. In addition the department can only issue a license if it determines that there is not a hydrologic pathway to the Colorado River or any other agricultural or drinking water source that could be contaminated with radioactive waste.

Past commissioners have publicly stated that AB 2214 should be repealed.

Do you support AB 2214? If not, please describe your reasons.

Response:

I support 2214. I believe that the siting, design and closure of any LLRW facility in California must meet Federal Regulations and any additional State Requirements.

3. In June 2004 the General Accounting Office (GAO) released a report, "Low-Level Radioactive Waste: Disposal Availability Adequate in the Short Term, but Oversight Needed to Identify Any Future Shortfalls." It found that no shortfall in disposal availability appeared imminent and that Envirocare/Utah, which accepted 99 percent of the nation's Class A waste in 2003, can accept 20 years or more of such waste under its current license. When GAO surveyed 2,000 radiation safety officers, only one responded with a concern regarding the lack of

disposal options for low-level radioactive waste.

In June 2000 the President of the University of California released a report which said there has been significantly diminished waste streams from California over the last twenty years with a ten-fold decrease in volume and an over fifty-fold decrease in radioactivity. According to the University of California report, this has made the development of a disposal facility appear less urgent and the projected disposal costs at such a facility less attractive.

Given the changing nature of the generation and disposal of LLRW, what steps do you support to further reduce, recycle and reuse LLRW consistent with Compact policies?

Response:

As of December 8, 2006 176 petitions were approved for exportation to Energy Solutions in Utah and 33 petitions to Barnwell. In 2005 there were 212 petitions to Utah and 38 to Barnwell. In 2004 there were 154 petitions to Utah and 32 to Barnwell. It appears that on average the number of petitions has not changed that much for the last 3 years. It is my understanding that the compact will not be able to ship waste to Barnwell starting in 2008. That being said, I support the recycle of as much waste as possible with special emphasis on finding recycle/reuse processes for the waste that goes to Barnwell. To this end, I would support a bill that would fund university research in this area. I also support the idea of the Federal Government allowing Barnwell type waste being shipped to a Department of Energy low-level radioactive waste disposal site for disposal.

4. The commission amended its "Policy of the Southern Low-level Radioactive Waste Commission Regarding Exportation of Various Low-Level Radioactive Waste Streams" on October 7, 2005, to allow the export of a newly created category of low-level radioactive waste: "slightly radioactive solid material."

Neither Congress nor the U.S. Nuclear Regulatory Commission

has provided authority to create this new category of waste and it's unclear who regulates it, if anyone. This situation could lead to the disposal of this waste into municipal landfills not designed to take radioactive waste and not regulated by the Nuclear Regulatory Commission. Such disposal has been banned in California since 2002.

Furthermore, after declaring this new category of low-level radioactive waste, the commission declared on April 21, 2006, that those facilities that accepted this new category of waste were outside the commission's jurisdiction and that the commission had no responsibility for environmental or regulatory aspects of those disposal facilities.

Although you were not a member of the commission when it created the new category of "slightly radioactive solid material", do you support the continued designation of this new category of material? What legal grounds does the commission have to create a new category of low-level radioactive waste material when neither Congress nor the U.S. Nuclear Regulatory Commission has made a determination on deregulating this type of material?

You were a member of the commission when the commission disavowed jurisdiction over facilities that accept this new type of low-level radioactive waste. What was your justification for the disavowing jurisdiction of facilities that accept this new category of low-level radioactive waste? Who will be responsible for the safety of this material at these municipal landfills?

Response:

I did attend the October 7, 2005 meeting of the Commission as a participant, but I do not remember any discussion of the term "slightly radioactive material". I did review the minutes of the October 7, 2005 Commission meeting and I did not find any mention of the term "slightly radioactive material". I would refer any legal questions to council.

As to your question regarding the April 21, 2006 meeting of the Commission, the subject of slightly radioactive material was not on the agenda and was not discussed, so I can't provide justification for a discussion that did not take place.

Currently the State and where applicable the NRC would be responsible for the safety of this type of material being disposed of in municipal landfills.

This subject is worthy of more discussion at a future Commission meeting.

5. Article 3, paragraph (c)(20) of the Southwestern LLRW Compact requires the commission to approve the exportation of LLRW outside the compact region by a 2/3's vote.

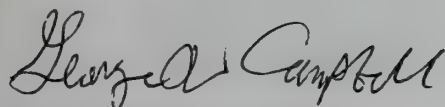
It has been reported that the commission has approved the exportation of LLRW without meeting the 2/3's vote requirement (e.g. by a majority vote, a majority vote of those members present, or by delegation to the executive officer).

Have you voted to allow the exportation of waste where the commission has approved it by less than the required 2/3's vote? Do you know of any instances where the commission has voted by less than a 2/3's vote to export waste?

Response:

I have not voted to allow the exportation of waste where the Commission has approved it by less than the required 2/3s vote and I do not know of any instances where the Commission has voted by less than a 2/3s vote to export waste.

Sincerely,

A handwritten signature in cursive script, appearing to read "George W. Campbell".

George W Campbell

1. *What do you hope to accomplish during your tenure as a member of the Southwest Low-Level Radioactive Waste Compact Commission? What specific goals do you have for the commission and how will you accomplish them?*

Response:

The Southwest Low-level Radioactive Waste Compact Commission was established by Public Law 100-712 in 1988 to do "whatever is reasonably necessary to ensure that low-level radioactive wastes are safely disposed of." To me, that means that public safety and a California environment free from radioactive contamination are the foremost responsibility of the Compact Commission. As a member I intend to insure that everything that can be done to achieve this is accomplished.

Being a member of the Commission for almost a year, I believe that it is well run and achieves its mandated objectives effectively. However I think the Commission could do more to inform the public on the issue of low level radioactive waste disposal and how it is presently accomplished. At each of the two meetings I have attended, only six or seven non-members of the Commission have attended, usually employees of the State agency responsible for nuclear safety at the meeting location. I'd like to see more public outreach.

It's my assessment that most Californians are frightened by the prospect of radioactive materials in the environment, and I think that view is justified. But as long as radioactive materials are used in California for power generation, medicine, industry, and research, we must insure that the disposal of the resulting hazardous waste is done in a way that is safe, both in the near term and for future generations.

One area in which the Commission is active is in training nuclear workers in the currently accepted methods of handling low level radioactive waste for disposal. Currently this is done through training courses and seminars that are offered a few times each year. But unfortunately those who would receive this training must travel to where it is offered, which is costly in terms of lost productivity and travel expense, as well as pay a registration fee charged by the Commission. Smaller organizations are consequently less likely to participate. I would like to see these training efforts expanded, offered on-line and through DVD, and free of charge. This type of activity is directly within our mandate to insure radioactive wastes are disposed of safely.

2. *In 2002 the Legislature passed and the governor signed AB 2214 (Keeley Chapter 513/Statutes of 2002), which prohibits the Department of Health Services (DHS) from issuing a license for a low-level radioactive waste (LLRW) disposal site in California unless the department determines that the siting, design, and closure of the facility meet federal regulations. In addition the department can only issue a license if it determines that there*

Senate Rules Committee

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is not a hydrologic pathway to the Colorado River or any other agricultural or drinking water source that could be contaminated with radioactive waste.

Past commissioners have publicly stated that AB 2214 should be repealed.

Do you support AB 2214? If not, please describe your reasons.

Response:

I obtained a copy of the AB 2214 legislation through the California State Legislature web site. The legislation covers directives to the Department of Public Health regarding radioactive waste reduction, stipulates minimum design standards for all California low-level radioactive waste sites, and specifically prohibits the use of Ward Valley in San Bernardino County from being used for such a site.

As a California citizen, I personally feel the provisions of this legislation are reasonable and necessary, and I am pleased that it was enacted into law.

However it should be noted that Article V of Public Law 100-712 specifies the Southwest Low Level Radioactive Waste Commission has no authority regarding the siting, design, development, licensure, or other regulation, or the operation, closure, decommissioning, or long-term care of, any regional disposal facility within a party state. Consequently AB 2214 has no direct effect on the Commission or its responsibility to insure for the safe disposal of low level radioactive waste.

3. In June 2004 the General Accounting Office (GAO) released a report, "Low-Level Radioactive Waste: Disposal Availability Adequate in the Short Term, but Oversight Needed to Identify Any Future Shortfalls." It found that no shortfall in disposal availability appeared imminent and that Envirocare/Utah, which accepted 99 percent of the nation's Class A waste in 2003, can accept 20 years or more of such waste under its current license. When GAO surveyed 2,000 radiation safety officers, only one responded with a concern regarding the lack of disposal options for low-level radioactive waste.

In June 2000 the President of the University of California released a report which said there has been significantly diminished waste streams from California over the last twenty years with a ten-fold decrease in volume and an over fifty-fold decrease in radioactivity. According to the University of California report, this has made the development of a disposal facility appear less urgent and the projected disposal costs at such a facility less attractive.

Given the changing nature of the generation and disposal of LLRW, what steps do you support to further reduce, recycle and reuse LLRW consistent with Compact policies?

Response:

I obtained a copy of the GAO report, as well as the transcripts of the subsequent testimony of Director Robin Nazzaro in September 2004, from the GAO website. I have not been able to obtain a copy of the Richard Atkinson June 2000 report, "Management and Disposal of California's Low-Level Radioactive Waste" in time to respond to this question.

Although according to the cited GAO report there is no shortfall of disposal availability for Class A waste, the volume of this waste has increased significantly, growing to 12 million cubic feet in 2003, an increase of 200% over 1999 levels. Much of this is due to cleanup efforts by the Department of Energy and Public Utilities.

However the report further points out that for 36 States, including California, the disposal availability for the more radioactive Class B and C waste will disappear completely after the summer of 2008. South Carolina has enacted legislation that will terminate access to the Barnwell facility, the only disposal site in the nation now accepting these waste classes from California, for States not in the Atlantic Compact.

Moreover according to GAO future waste volumes and disposal options are very uncertain. They even suggest Congress consider directing the NRC to report if LLRW disposal and storage conditions change sufficiently in the next few years that new legislation becomes necessary.

This question suggests that the disposal of low level radioactive waste is of no great concern, that everything is fine. I strongly disagree with this view. My personal commitment to a California environment unsullied by the effects of radioactive contamination fundamentally motivates my participation in this Commission in the spirit of public service.

Rather I think that the long term storage or even perpetual retention of Class B and C waste at many of the more than 2000 licensed facilities in California represents a very serious security and health threat to all of us. We will soon witness the creation, in effect, of many low level radioactive waste disposal sites around the State because there will be no available alternative. And in my assessment it will only be a matter of time before some of these are abandoned and become Superfund sites. This is not a pleasant prospect.

With my background in nuclear counterterrorism I am particularly concerned that these materials could be stolen and used for weapons purposes, much as al Qaeda operative Jose Padilla planned to do in 2001 before he was apprehended by federal authorities. I gave a talk on this topic at the April 2006 meeting of the Compact Commission.

Generators of LLRW are making focused efforts to reduce the volume of waste they create according to the GAO, but this appears to be a direct response to the rapidly increasing costs of disposal. The Barnwell facility now charges up to \$1,625 per cubic foot for some LLRW. The fees the Commission charges are \$1.35 per cubic foot up to 40,000 cubic feet, then \$0.10 per cubic foot thereafter. I suspect the fee schedule of the Commission hasn't any effect on the reduction of waste volume whatsoever. It should also be pointed out that these reductions in volume do not decrease the dangerous radioactivity of the waste but instead concentrate it into smaller packages.

Although I am very much in favor of reducing the LLRW generated in California I do not see a direct way the Southwest Low Level Radioactive Waste Commission can contribute much to accomplish this. I believe it would be more appropriate for the Commission to instead focus its efforts on Article III (g)(1) of Public Law 100-712 and as directed do whatever is reasonably necessary to ensure that low-level radioactive wastes are disposed of safely.

4. The commission amended its "Policy of the Southern Low-level Radioactive Waste Commission Regarding Exportation of Various Low-Level Radioactive Waste Streams" on October 7, 2005, to allow the export of a newly created category of low-level radioactive waste: "slightly radioactive solid material."

Neither Congress nor the U.S. Nuclear Regulatory Commission has provided authority to create this new category of waste and it's unclear who regulates it, if anyone. This situation could lead to the disposal of this waste into municipal landfills not designed to take radioactive waste and not regulated by the Nuclear Regulatory Commission. Such disposal has been banned in California since 2002.

Furthermore, after declaring this new category of low-level radioactive waste, the commission declared on April 21, 2006, that those facilities that accepted this new category of waste were outside the commission's jurisdiction and that the commission had no responsibility for environmental or regulatory aspects of those disposal facilities.

Although you were not a member of the commission when it created the new category of "slightly radioactive solid material", do you support the continued designation of this new category of material? What legal grounds does the commission have to create a new category of low-level radioactive waste material when neither Congress nor the U.S. Nuclear Regulatory Commission has made a determination on deregulating this type of material?

You were a member of the commission when the commission disavowed jurisdiction over facilities that accept this new type of low-level radioactive waste. What was your justification for the disavowing jurisdiction of facilities that accept this new category of low-level radioactive waste? Who will be responsible for the safety of this material at these municipal landfills?

Response:

I was not a Commissioner in 2005 and have no direct knowledge of what occurred at the October 7 meeting of that year. I did obtain a copy of the minutes of that meeting, but could find no reference to "slightly radioactive solid material". As far as I can tell reading Public Law 100-712 the Commission has no legal authority to create a new category of low-level radioactive waste, assuming it has done so as alleged. I intend to raise this issue with the other Commissioners and get to the bottom of whatever is motivating this question.

I regret that I am also at a loss to answer the second part of this question. Although I was a Commissioner in 2006, I did not participate in any discussion of disavowing any jurisdictions at the April 21st meeting in Bismarck, ND, as alleged. I could find nothing in the minutes of the meeting on this topic. I have no knowledge of who is responsible for the safety of any type of municipal landfill. I will raise this topic with the other Commissioners and attempt to get some insight on what this questioner is trying to get at.

5. Article 3, paragraph (c)(20) of the Southwestern LLRW Compact requires the commission to approve the exportation of LLRW outside the compact region by a 2/3's vote.

It has been reported that the commission has approved the exportation of LLRW without meeting the 2/3's vote requirement (e.g. by a majority vote, a majority vote of those members present, or by delegation to the executive officer).

Have you voted to allow the exportation of waste where the commission has approved it by less than the required 2/3's vote? Do you know of any instances where the commission has voted by less than a 2/3's vote to export waste?

Response:

I have never voted to allow the exportation of waste where the commission has approved it by less than the required 2/3's vote. Looking back over the minutes of the last few meetings, I do not know of any instances where the commission has voted by less than a 2/3s vote to export waste.

Integrated Waste Management Board

Jeffrey Danzinger, Board Member

Responses to Questions

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the board?*

The Board's two overarching missions are to (1) protect the public health and safety, and the health of our environment; and (2) achieve diversion of waste from landfills.

I believe we can effectively serve these missions in concert through three objectives:

First, sustaining and building upon AB 939 and the ongoing 939 effort. I have seen nothing to indicate that the relevancy of 939 has waned in the least; it remains a blueprint for future success, and the materials it is designed to collect, process and return to the market still comprise much of the remaining 50 percent to be diverted from landfills.

Second, intensifying our focus on market development, which is really a backdrop to everything we do; a sustainable society is not one in which secondary materials pile up in warehouses or in landfills where they can pose threats to future generations, or do not have sufficient value to be pulled out of the waste stream in the first place.

And third, exploring some greater degree of producer responsibility, including stronger product stewardship (take-back programs and spreading the cost of recycling and reuse across all responsible parties), and "extended" producer responsibility, a more ambitious undertaking that includes changing how products are manufactured so that product content and design are more consistent with the sustainable goals of our society. This is the other side of the equation from market development – finding solutions closer to the point of waste generation and preventing the creation of waste.

Senate Rules Committee

DEC 29 2006

Appointments

2. *In enacting the Integrated Waste Management Act (Division 30, commencing with Section 40000, of the Public Resources Code) the Legislature stated that the law's primary purpose was to reduce, recycle, and reuse solid waste, to protect natural resources and the environment, and to improve the regulation of solid waste facilities.*

In recent years, the board has become increasingly involved in ancillary activities such as the promotion of conversion technologies (see question 4 below) and in other activities that appear to extend beyond its core statutory mission. At the same time, there have been independent evaluations of the board's oversight and enforcement activities that suggest it may not be fulfilling the core activities assigned to it under law.

How can the board best succeed in fulfilling its basic responsibilities outlined under law? What specific steps will you take to ensure the board is fulfilling its core mission first and foremost?

I will continue to be aggressive in reinforcing the hierarchy and programs established in the Integrated Waste Management Act (IWMA). I see much remaining to be done to accomplish the mission set forth by the IWMA, and in my mind, achievement of 50 percent statewide diversion is not the end, but the beginning of the end. If you look at the most significant elements of the waste stream still going to landfills, it is unsparingly clear that there is a tremendous amount of readily recoverable materials still included – materials that the existing 939 infrastructure is already designed to divert to better and higher uses in society.

Put another way, a look at the diversion ethic of “reduce, reuse and recycle” shows that we have gone far in the latter, but we have much more we can accomplish through the 939 infrastructure on reuse, and we have barely scratched the surface on the top tier of the 939 hierarchy: source reduction – preventing the creation of waste in the first place.

This is the good news – the fact that for all we have achieved through 939 thus far, the 939 construct remains a viable, dynamic platform from which to catapult our state much further beyond 50 percent diversion.

The sobering news is that due to the explosive growth in our economy and population, California is disposing roughly the same amount of waste today as it was when the IWMA was enacted – and our growth trends will continue to pose a significant challenge in this regard. Also, there are some areas of waste diversion, particularly organics and construction/demolition waste, where improvement depends on the ability to expand our recycling/composting infrastructure. Yet, siting such facilities in California has become extremely difficult and a daunting political challenge. This compels us to continually bring innovation and ingenuity to the challenge of keeping waste out of our landfills.

3. *In the past several years, we have heard concerns about the role of the executive staff and its relationship with the board and individual board members. For example, it recently was reported that the legal staff of the board modified a longstanding position on enforcement of the trash bag law due to strong pressure from a board member.*

Please describe how you perceive your role as a board member in relationship to the executive staff? How should the board provide policy direction?

I believe that Board members are expected to provide policy leadership to the organization, establish measures of structure and accountability, and work as a team to accomplish the fundamental objectives of our organization. Policy direction should always be conveyed by the consensus of the Board. I have no interest in pursuing individual agendas; I believe one of the great strengths of the Board is the diversity of the Board's composition, and the collaborative process that may, by comparison, be more cumbersome and lengthy, but generally ensures a better, more thoughtful product in the end.

4. *In 2002, The Legislature and Governor enacted AB 2770 (Chapter 740 Statutes of 2002) that directed the board to prepare and submit to the Legislature a study on "conversion technologies" and appropriated \$1.5 million to do the report. The program called for an evaluation of conversion technologies, including a scientific peer review.*

Since that time, the role of conversion technologies has become a subject of debate. The board's current mission is to regulate these technologies as solid waste facilities, not promote them. However, some have advocated for promotion on the part of the board.

What is your view? Should the board promote specific technologies?

As an individual Board member, I do not present myself as either an advocate or an obstruction to any such technologies. My priorities, first and foremost, are the functions and goals established in the IWMA and firmly embedded as the Board's defining work. I do not believe the Board should "promote" a specific technology, or anything for that matter, that is conceptual, unproven, and not yet emerged from the scientific stage. If there is a technology that could ultimately drive up waste diversion, and bring together the nexus of waste reduction, pollution prevention, and clean alternative energy – and in a way that clearly exceeds environmental and public safety standards and safeguards – then there is value in exploring the merits and true performance characteristic of such a technology. To this end, the Board can play a constructive role by collaborating with and supporting the state agencies that regulate renewable energy and alternative fuels. However, I believe the Board must never lose sight of the primacy of the 939 effort – an effort which, by any accounting, holds a tremendous amount of remaining potential to be realized. And this is where the Board's clearly appropriate advocacy role lies.

5. *Since 1989, when the Act was signed into law, Californians have reduced, recycled and composted nearly half the waste disposed of in the state. At the same time, due to factors like growth in population and the economy, the amount of solid waste still disposed has remained relatively constant at roughly 45 million tons annually.*

How many cities and counties in the state still have not met the 2000 requirement to reduce, recycle, or reuse 50% of solid waste? What actions is the board taking to ensure those jurisdictions meet the statutory requirement? Please provide a schedule as to when those jurisdictions will be brought into compliance.

The statewide average of 52 percent diversion is a stunning achievement and reflects an historic effort – in fact a partnership – among cities and counties, the waste and recycling industry, and millions of Californians who have changed their behavior. Today, two-thirds of our jurisdictions are in compliance with the 50 percent requirement, and some of those have in fact established new and higher goals on their own.

Although much attention has been given to the statewide average, the fact remains that the 50 percent requirement set forth in the IWMA applies to individual jurisdictions. The Board's focus is on working closely with those jurisdictions that are struggling to meet the mandate, through technical assistance, identifying waste streams and where the best opportunities exist to increase diversion, and in local and regional market development efforts. This approach has proven successful with many jurisdictions that are now in compliance.

Some of the jurisdictions struggling to meet the mandate include widespread rural jurisdictions, which are faced with very substantial costs to implement most diversion programs. Targeted assistance to these jurisdictions continues to be a priority for the Board.

About 10 percent of the jurisdictions will be coming to the Board for consideration over the next several months. A quarter of the jurisdictions, which previously received SB 1066 time extensions, will undergo biennial review of their status over the next 12-24 months.

I believe the Board's overarching efforts to renew the focus on priority materials, such as organics and construction/demolition waste, and on an aggressive program to stimulate markets for secondary materials – which I consider to be a core competency of the Board – will prove most successful in helping the maximum number of jurisdictions reach compliance with the diversion mandate.

6. *In your opinion, what needs to be done, if anything, to continue progress toward reduction and recycling of solid waste beyond the statutory requirements to divert 50% of solid waste from landfills? Should the board make that determination or should the law be amended to address the issue?*

I am excited by the remaining potential that exists in the current 939 construct. We need only look at the recent Waste Characterization Study by the Board to see that many of the materials that comprise the thrust of our current 52 percent diversion rate, still comprise the vast majority of what is being landfilled today. Clearly, one element that will take us much further is market development, something we have begun to restore to the more prominent role it played at the Board in the earlier years of the 939 era.

Finding more solutions closer to the point of waste generation, including producer responsibility, can also have a tremendous impact on the effort. There are also new opportunities to expand waste reduction and achieve other benefits at the same time. We see these opportunities in AB 32 and the Governor's Bioenergy Interagency Working Group.

Better waste management plays a role in climate change, because less waste going to the landfill means lower greenhouse gas emissions – particularly methane, which has a far greater warming effect than carbon dioxide.

The first task associated with AB 32 that has been achieved is 50 percent diversion, one of the Board's three tasks.

And as we continue to elevate our game, with higher recycling rates, and the promise of bioenergy/biofuels, we can contribute even more to alleviating the climate crisis, while reducing waste and our dependency on fossil fuels.

Something else that will be important as we consider how to define success beyond 50 percent, is improving upon our measurement system – to make it more timely and accurate, and with a stronger focus on program implementation. A better system can help us clarify new goals and trigger policy decisions down the road that will be good for the state.

Consideration of establishing a new goal/requirement should include a collaborative process involving the Administration, Legislature, the Board and affected parties. In the end, if a new mandate is going to be established, given the precedent of the existing diversion mandate having been established in statute, it would seem appropriate that anything comparable taking us to the next level should also be the product of legislation.

7. *The board has successfully diverted a large number of used tires from existing stockpiles in the last several years. However, many others are still used as a source of fuel and are combusted.*

What other alternative end uses do you believe are available and could be developed to divert used tires to other recycling uses?

The good news regarding waste tires is that the state has made tremendous progress in recent years. The tire recycling rate as of 2004 is 75 percent, an increase of nearly a third since 1990. And we face no large tire piles like the behemoths of the last decade; the last remaining piles of any significance, the Sonoma tire piles, are 90 percent remediated.

Also encouraging is the fact that there are ready opportunities to increase tire reuse rates. The Board has put a priority on building a sustainable statewide market infrastructure for tire derived products. And these products, namely Rubberized Asphalt Concrete (RAC) and Tire Derived Aggregate (TDA), are proven, already being used in many jurisdictions, and have clearly established advantages over their conventional counterparts.

We continue to work very closely with Caltrans to expand their use of RAC in the 45,000 lane miles of road they manage around the state. And now we are expanding our efforts with local governments that manage about two-thirds of the state's roads. In particular, we are engaged in an aggressive outreach and marketing campaign targeting local decision-makers to highlight the benefits of RAC, TDA and other secondary materials.

One thing I am also very interested in is expanding our capacity to process crumb rubber for domestic and export markets. I know that this has received some attention in the Legislature, and we look forward to working with all concerned to move further in this direction.

8. *Have you met with your counterparts at other agencies to ensure that state government is doing all that it can to promote the use of alternative end uses for used tires?*

The IWMB has, and is continuing to, work closely with Caltrans as well as other state agencies in promoting and encouraging alternative uses for waste tires, especially RAC and civil engineering uses such as light weight fill behind freeway sound and retaining walls.

We also have a concerted campaign to work with local jurisdictions as well as Caltrans in recognition of the fact that two thirds of the road projects in the state are implemented by these entities.

This year we partnered with Cal Expo officials to showcase tire derived products at the State Fair and other venues. These products included a variety of mats, mulches and bedding materials, among others. This is consistent with our larger effort to increase the procurement of all environmentally preferable products throughout state government.

9. *Recent reports from the Bureaus of State Audit and from Office of the Secretary of Cal-EPA suggest that the enforcement of solid waste laws and standards by the board and by local solid waste enforcement agencies is uneven and at times, ineffective.*

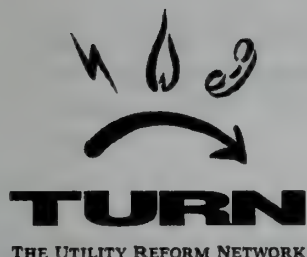
These reports suggest that the board and local entities rarely impose civil and criminal penalties for serious violations, that private waste facilities generally are regulated more stringently than public facilities, and that these enforcement agencies at times have direct conflicts in enforcement because they are part of local governments who derive income from the operation of solid waste facilities.

What specific steps do you support to improve enforcement of solid waste laws and standards? What actions has the board taken to address the concerns raised in these reports?

There is no substitute for a strong, vigorous enforcement program. Although the overall level of regulatory compliance at solid waste facilities is very high, I believe enhancement of Board enforcement authority in several areas should be considered.

I would support the Board and LEAs having the authority to impose criminal penalties for violation of solid waste laws and regulations, and the expansion of authority to impose civil penalties. I would support allowing LEAs to issue infractions (administrative penalties) for minor violations like those issued by their local counterparts to enforce hazardous waste laws. I would support granting the Board the ability to reject incomplete permit applications. And I would support the Board having the ability to take direct enforcement action against a solid waste facility when the LEA has not taken appropriate action.

We have found considerable success and a strong working partnership with LEAs by providing continuing technical training, focusing on preventing problems from occurring and on working with facility operators to ensure timely compliance when problems do occur. However, expanding our authority in at least some of the areas mentioned above would be a prudent course as well.



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January 5, 2007

Senator Don Perata, President *pro tem*, Chair
Senate Rules Committee
California State Senate

Re: Appointment of Rachelle Chong to California Public Utilities Commission

Dear Senator Perata:

Wednesday's hearing before the Senate Rules Committee provided Rachelle Chong an opportunity to address a number of the points raised by groups that have asked the committee to not confirm her appointment. Unfortunately, many of Ms. Chong's statements at the hearing raise further concerns and questions. TURN urges the Committee to get these concerns and questions addressed before voting on the confirmation.

CPUC Implementation of AB 2987 (The Digital Infrastructure and Video Competition Act of 2006)

The members of the Committee raised a number of questions about the CPUC's implementation of AB 2987, particularly the consumer protection elements that require non-discrimination in system build-out and prohibit cross-subsidization of video services by basic phone service. Commissioner Chong insisted that she is fully committed to addressing these issues, as well as issues concerning the digital divide.

While such statements may sound encouraging, the track record to date is troubling on these points. For many legislators, the consumer protections included in the bill were key to their vote in favor of its passage. But **the order initiating the CPUC's implementation of the bill, authored by Ms. Chong's office, seems to assign these issues second-class status.** The order focuses far more attention on addressing the industry's needs to get applications for video franchises filed and approved.

Contrary to the answers she gave Senator Padilla, **the proposed rules issued to date do not address how the CPUC would consider or analyze whether an initial franchise application is discriminatory based on the definition of the service territory** – the applicant may well exclude neighborhoods or communities that have traditionally been subjected to redlining practices. The proposed rules contain no discussion of how other interested parties could rectify an applicant's failure to comply with the legislature's mandate. In fact, the proposed rules may have the practical effect of preventing such

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objections from being raised – they specifically provide that “no person or entity may file a protest to an Application.” Thus **the very Californians that the legislature sought to ensure would share in the benefits of an expansion of video and broadband competition are denied the right to call attention to applications that may well only deepen the digital divide.**

Similarly, the proposed rules make no mention of how the CPUC would enforce the prohibition on cross-subsidization. Such an undertaking will likely require extensive effort on the agency’s part, and access to detailed cost information regarding local phone services. **It is hard to imagine how the agency will implement this important provision in an era of scaling back reporting requirements and regulatory scrutiny of even the most basic phone services, as evidenced by the URF decision.** Commissioner Chong’s initial order simply failed to address the cross-subsidization question.

The Committee should ask Ms. Chong to explain where her commitment to enforcing the consumer protection provisions of AB 2987 appears in her initial order beginning the CPUC’s implementation of the new statute, and to explain how she foresees gathering and using the information necessary to implement the anti-discrimination and anti-subsidization provisions.

AT&T’s Tariffs to Prevent Marketing Abuse

During her confirmation hearing, Commissioner Chong responded to numerous questions relating to the Commission’s controversial action allowing AT&T to eliminate marketing disclosure requirements required by an earlier decision addressing the company’s repeated marketing abuses. The explanation presented at the hearing seemed to be:

- 1) the language permitting abandonment of “asymmetric” regulations was knowingly inserted in the URF decision in a version circulated to other CPUC members approximately 48 hours before the vote,
- 2) the Commission was acting under tremendous time pressure in getting the URF decision issued,
- 3) Commissioner Chong was unaware at the time the URF decision was modified and issued that this language might be used to scuttle such company-specific remedial tariffs intended to implement or enforce a prior CPUC decision,
- 4) Commissioner Chong seemed to also be unaware when AT&T filed its advice letter that the advice letter proposing to abandon the tariffs in question had anything to do with the enforcement of the CPUC decisions addressing the company’s marketing abuses, and

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5) Commissioner Chong cited AT&T's subsequent advice letter restoring some of the tariff provisions that would have been removed, describing the restored provisions as "key."

The core question, though asked several times, was never directly answered, at least to TURN's knowledge: **If eliminating the marketing tariffs was inadvertent, why did Commissioner Chong cast the swing vote in favor of the resolution issued in November that allow the revised tariffs (eliminating many of the marketing tariffs) to remain in place, rather than staying those revised tariffs?**

Under the approach adopted by the Commission on a 3-2 vote, even though neither AT&T nor any other carrier can take action under the "asymmetric regulation" provision of the URF decision, and even though the Commission recognizes the need to review the appropriateness of AT&T's earlier action, during the interim, AT&T's revised tariffs abandoning these consumer protection provisions are permitted to stand. The dissenting Commissioners pointed out that the agency could have easily avoided this outcome had it simply stayed the AT&T-requested revisions.

Furthermore, there were elements of the Commissioner's explanation that simply do not make sense. **There was no urgency requiring action at the meeting of August 24th.** The URF decision could have been held over to the next meeting to ensure that all CPUC members had sufficient opportunity to review the numerous and substantial changes made in the revised draft decision.

The issue of "asymmetric" application of regulations or tariffs was notably absent from the July 25, 2006 draft decision issued by her office. While the August 15, 2006 comments of AT&T raised the issue and asked for modifications to give the company what it wanted on the issue, the August 22, 2006 reply comments of the Division of Ratepayer Advocates objected on the basis of the matter being beyond the scope of the proceeding and lacking record evidence.

And while Ms. Chong claims the revised version was provided to other Commissioners on August 22, Commissioners Brown and Grueneich have stated very clearly and very publicly (in their dissents to the November resolution) that the revisions were not provided until late on August 23, with the vote scheduled to take place the following morning. There should be some explanation of why a decision of this magnitude was put to a vote no more than 48 hours, and perhaps far less than that amount of time, after substantial modifications had been made to the draft decision.

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Finally, the suggestion that the problem was fixed even in part by AT&T's follow-on advice letter purporting to restore some of the consumer protection it had originally sought to abandon is not consistent with the net changes. Even with AT&T's backtracking on some of its proposed changes, the loss of consumer protections is substantial. A partial list of what consumers lost includes requirements

- To inform customers that competitive alternatives for inside wire repair are available;
- To inform customers that services don't have to be purchased as part of a bundle, but are available individually (as well as the specific prices for each product);
- To disclose where AT&T will post rates and charges as well as an explanation of the available residence exchange access (including Lifeline Telephone Service) services including a quotation of the applicable recurring rates, nonrecurring charges applicable to each such residence service;
- To indicate to the customer that the requested order is complete before seeking permission to begin the marketing pitch for other services;
- To obtain advance explicit consent from the customer in order to access customer proprietary information, and to present marketing information;
- To "disclose non-misleading information...";
- To inform customers seeking a change or addition to their existing service of the applicable recurring rates and nonrecurring charges for the requested change or addition; and
- To inform customers when the carrier changes its rates or initiates new rates.

Commissioner Chong appears to believe the matter is "fixed" because this list is shorter than the original list, and because the CPUC might ultimately reverse itself and add some of these requirements back into AT&T's tariffs. **But there appears to be no dispute over certain facts: these requirements had been in AT&T's tariffs prior to the URF decision; these requirements are no longer part of the company's tariffs today; and the CPUC could have directed AT&T to add all of the requirements back into its tariffs during the interim but, on a 3-2 vote, chose not to.**

TURN urges the Committee to seek further clarification on these points, including specific answers to the following questions:

- What was the exigency that required a vote on August 24, 2006, rather than giving Commissioners more time to review the changes?
- Can Commissioner Chong's office provide a document that demonstrates precisely when the modified URF language was provided to other Commissioners?
- What were the measures added back to AT&T's tariffs that Commissioner Chong deemed the "key" provisions?

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- And, as stated earlier, if eliminating the marketing tariffs was inadvertent, why did Commissioner Chong cast the swing vote in favor of the resolution issued in November that allow the revised tariffs (eliminating many of the marketing tariffs) to remain in place, rather than staying those revised tariffs?

Consumer Bill of Rights

Commissioner Chong emphasized that she was not yet appointed to the CPUC in 2004, when the agency adopted the rules embodied in the Consumer Bill of Rights (a decision that was heralded by consumer advocates across the country as a benchmark of consumer protection regulation), nor when it stayed implementation of those rules in early 2005. She also cited the as-yet unissued rulemaking on in-language requirements as an indicator of her commitment to consumer protection. Neither is a satisfactory explanation of her role in the Bill of Rights process.

In 2006 the CPUC was faced with a stark choice. The alternate decision sponsored by Commissioner Grueneich, while scaled back from the 2004 decision, retained many of the strongest pro-consumer provisions (such as the right to a written contract at the point of sale, a 30-day trial period free of early termination fees, limits on the misleading labeling of fees and taxes as mandated by the government, limits on service termination and deposit practices as well as detailed rules regarding charges on phone bills to prevent cramming). The Grueneich Alternate also added an in-language requirement that required contracts and order confirmations to be in the language of solicitation. On the other hand, Commissioner Peevey's version gutted the Bill of Rights and replaced it with a watered down set of "principles," retaining only a few rules covering almost irrelevant topics, scaled-back cramming rules that pre-dated the Bill of Rights, and a commitment to implement consumer education and to improve after-the-fact enforcement.

Commissioner Chong was the swing vote on consecutive 3-2 outcomes, first rejecting the Grueneich Alternate and then adopting the Peevey approach. With her votes, Commissioner Chong rejected consumer protections with rules intended to prevent consumer harm, in favor of leaving such matters to the market, with the Commission providing remedies only after the consumer harm has occurred.

In light of her stated commitments to in-language requirements, clear disclosures to consumers and eliminating "bad actors" from the market, TURN respectfully suggests that the Committee should seek further clarifications:

What was it about the protections that were embodied in the Grueneich Alternate that Commissioner Chong found inappropriate, as indicated by her vote against that approach?

In addition, if the Grueneich Alternate had been adopted, wouldn't the CPUC have already adopted an in-language requirement, obviating the need for the still-to-be-opened rulemaking that Ms. Chong referred to as addressing this issue?

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General Approach to Regulation

At Wednesday's hearing Commissioner Chong repeatedly said that she has a "trust but verify" approach to regulation, trusting the competitive market to rein in anti-consumer behavior but, where the market does not work, having the CPUC step in to make things right.

Whether or not one agrees that this is a valid approach, it clearly depends on the CPUC continuing to have the means to "verify." **To that end, though, Ms. Chong is taking steps toward making it more difficult for the CPUC to perform such a task.** The URF decision from last August permits the carriers to stop filing reports with California-specific data, and instead relies on FCC reports that are more nation-wide in scope. The order initiating implementation of AB 2987, as discussed above, does not require anything of the carriers in terms of the information needed to ensure the carriers comply with the bill's anti-subsidization provisions, despite the Legislature having made the agency responsible for ensuring that carriers follow the law. It's true – the two-year rate freeze on basic service will minimize opportunities for subsidization. But the video franchises run ten years.

Abandoning reporting requirements now could well mean that future efforts to enforce AB 2987 lack the necessary information.

Finally, Commissioner Chong characterized the parties opposing her confirmation as not sharing her belief in competition. For TURN, at least, this is not accurate, as we have long promoted competition where meaningful competition exists and serves the best interests of the state's consumers. Our difference with Commissioner Chong has to do with her demonstrated willingness to take as an article of faith that meaningful competition for certain services exists at such a level that permits her to pursue a scaling back of regulation. TURN believes that such a willingness to engage in "faith-based deregulation" unduly and unnecessarily puts Californians at risk.

Therefore TURN continues to oppose the confirmation of Ms. Chong. We take this position not as non-believers in competition, but rather based on her track record over the past year, as well as ongoing concerns based on the matters raised but not fully addressed at the Rules Committee's hearing.

As always, please feel free to contact me if you wish to discuss this matter further.

Yours truly,

Robert Finkelstein
Executive Director

cc: Members, Senate Rules Committee
Governor Arnold Schwarzenegger
Commissioner Rachelle Chong



To: Members of the Senate Rules Committee

From: Richard Chabran, Chair, California Community Technology Policy Group

Date: Monday, January 8, 2007

Re: Comments Concerning Commissioner Chong's Confirmation

Commissioner Chong is up for confirmation by the Senate Rules Committee to the California Public Utilities Commission (CPUC). This memo points out several areas that will be addressed by the CPUC in the next two years. We are asking that there be assurances from Ms. Chong regarding: stronger regulations of video franchising; the telecommunications Consumers' Bill of Rights; and a reassessment of the "asymmetric administrative processes" in the URF decision, and re-implementation of the disclosure rules eliminated by AT&T's recent advice letter.

1) Stronger regulation of video franchising

The proposed regulations currently being planned for video franchising under the terms of the recently enacted AB 2987 (Nuñez, Levine) are inadequate (see attached comments). These regulations assume that the CPUC will use an administrative or ministerial rather than a regulatory approach when reviewing applications. Specifically, the approach being taken will not allow the CPUC to properly vet the applications. We are asking that:

- Final regulations must include a public, participatory application process, with an opportunity for public protest;
- Adequate time must be allowed for public review before adoption;
- There needs to be a review of applications to see if the information provided could lead to redlining. Regulations regarding redlining need to be adopted;
- In order to facilitate public participation, video franchising regulation should be covered by the intervenor compensation process; and
- The proposed regulations do not address the statute's anti-discrimination or cross-subsidy provisions. Regulations that robustly enforce these provisions must be drafted.

2) Bill of Rights for Consumers

After four years of discussion, a Consumers' Bill of Rights for cell phone users was adopted by the CPUC. However, the new members on the CPUC, including Commissioner Chong, decided on a 3-2 vote to permanently stay the regulatory framework that would have required all contracts to be written in the language used to market the services to the consumer, allowed for a 30-day return policy, required that the consumer receive a written copy of all key rates, terms and conditions, and that all fees and charges be grouped separately on the bill. These consumer protection regulations were not enacted, and

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Appointments

instead, the CPUC scheduled forums to assist with consumer education. Education while valuable, is a poor substitute for basic consumer rights.

CPUC's in-language proceedings are set to begin this year. Ms. Chong should be asked to support requiring telecommunications carriers and/or the agents who sell their services to provide written in-language the key rates, terms and conditions of the contract whenever services are marketed, negotiated or sold in a language other than English. We have heard from consumers that the contract is translated after it is signed and there are minimal provisions for the consumer to cancel a contract once it is signed. However, large fees are often required for cancellation.

Positive steps that the CPUC should take in the in-language proceeding is to support the use of community based organizations as the most effective way of reaching certain populations to conduct consumer education and complaint resolution.

3) Reassessment of the "asymmetric administrative processes" in the URF decision, and re-implementation of the disclosure rules eliminated by AT&T's recent advice letter

We are in support of the Consumers Union and TURN's position on the asymmetric administrative process. The "asymmetric administrative processes" language in Ordering Paragraph 21 of the Uniform Regulatory Framework decision¹ to allow carriers to eliminate regulatory requirements through merely an advice letter should not be upheld. This decision is being revisited in Phase II of the URF proceedings and should be reversed. AT&T's actions by eliminating disclosure and marketing rules through Advice Letters 28800 and 28982 should be reversed.

¹ The URF decision is available at http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/59388.htm Ordering Paragraph 21 is at p. 286.

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